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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

BRUCE PATRICK HANEY,

Plaintiff and Appellant,

v.

D. CASTILLO,

Defendant and Respondent.

F062080

(Super. Ct. No. 09C0076)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Bruce Patrick Haney, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Jonathan L. Wolff, Assistant Attorney General, Kenneth R. Williams and John W. Riches II, Deputy Attorneys General, for Defendant and Respondent.

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Appellant, Bruce Patrick Haney, a state prison inmate, filed a complaint alleging that he was injured when respondent, D. Castillo, a correctional officer, negligently used unnecessary and excessive force against him. The trial court granted summary judgment in respondent's favor. The court found that appellant became disruptive, that some force was necessary to maintain order and discipline, and that there was no evidence of a wanton, malicious, or sadistic intent to cause harm. The court further noted that appellant's failure to provide a separate statement of disputed material facts as required by Code of Civil Procedure section 437c, subdivision (b)(3), also constituted a sufficient ground for granting summary judgment.

Appellant argues the trial court erred in granting summary judgment because there was no evidence that he became disruptive and the declarations filed by respondent contradicted each other. Appellant further contends that the trial court abused its discretion when it granted summary judgment without giving him an opportunity to correct the procedural deficiency.

As discussed below, the trial court properly granted summary judgment. Further, the trial court did not abuse its discretion in failing to give appellant the opportunity to file a separate responsive statement. Accordingly, the judgment will be affirmed.

BACKGROUND

While appellant was at the prison law library, the librarian called for assistance from correctional staff because some of the inmates were not properly signed in to be there. Respondent arrived and ordered several inmates, including appellant, to leave the library. Appellant explained that he was authorized to be in the library and argued with respondent. Appellant told respondent that he would not leave without his legal papers. According to the librarian and the correctional officers present, appellant was loud, argumentative, belligerent and disruptive. Appellant did not present any competent evidence to contradict this description of his behavior.

Following respondent's order, appellant submitted to being placed in handcuffs. What happened next is in dispute. Appellant contends that respondent then attempted to throw him to the ground and, with the assistance of another correctional officer, succeeded in putting him on the ground. In contrast, respondent states that, while he and another correctional officer were escorting appellant away in handcuffs, appellant went limp and fell to the ground in a prone position. Appellant claims he suffered injuries to his face, knee, and wrist. The responding staff did not observe any injuries and appellant did not receive any medical treatment.

Appellant filed the underlying complaint alleging that respondent negligently used unnecessary and excessive force against him. Appellant alleged causes of action for general negligence and intentional tort.

Respondent moved for summary judgment. Appellant opposed the motion but did not submit a separate statement of material facts.

The trial court granted summary judgment. The court found that some force was necessary to maintain order and discipline in response to appellant's disruptive behavior and that there was no evidence of a wanton, malicious, or sadistic intent to cause harm. The court further found that appellant's opposition was procedurally defective.

DISCUSSION

A party moving for summary judgment bears the burden of persuading the trial court that there is no triable issue of material fact and that he or she is entitled to judgment as a matter of law. (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 525 (*Brown*)).) Once the moving party meets this initial burden, the burden shifts to the opposing party to establish, through competent and admissible evidence, that a triable issue of material fact still remains. If the moving party establishes the right to the entry of judgment as a matter of law, summary judgment will be granted. (*Ibid.*)

On appeal, the reviewing court must assume the role of the trial court and reassess the merits of the motion. (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1601.) The appellate court applies the same legal standard as the trial court to determine whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. The court must determine whether the moving party's showing satisfies his or her burden of proof and justifies a judgment in the moving party's favor. (*Brown, supra*, 171 Cal.App.4th at p. 526.) In doing so, the appellate court must view the evidence and the reasonable inferences therefrom in the light most favorable to the party opposing the summary judgment motion. (*Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1522.)

As noted above, appellant alleged causes of action for negligence and intentional tort based on the claim that respondent used unnecessary and excessive force when he placed appellant in handcuffs and threw him to the ground. Viewing the evidence in the light most favorable to appellant, we will accept appellant's contention that he was shoved to the ground.

To establish liability for negligence, appellant must prove that respondent breached his duty to act reasonably under the circumstances. (*Brown, supra*, 171 Cal.App.4th at p. 534.) In the police context, the Fourth Amendment excessive force standard is applied to analyze the reasonableness of the officer's conduct. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 514.) Similarly, for the intentional tort of battery, a plaintiff must prove that the peace officer's use of force was unreasonable under the Fourth Amendment. (*Brown, supra*, 171 Cal.App.4th at p. 527.) In the analogous prison context, the reasonableness of a correctional officer's conduct is analyzed under the Eighth Amendment excessive force standard. (*Wilkins v. Gaddy* (2010) ___ U.S. ___ [130 S.Ct. 1175, 1178] (*Wilkins*).

When a prisoner alleges that a correctional officer used unnecessary and excessive force, the judicial inquiry is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” (*Hudson v. McMillian* (1992) 503 U.S. 1, 7 (*Hudson*)). To decide whether a particular use of force was reasonable or evinced wantonness, the court considers the objective need for force, the relationship between any such need and the amount of force actually used, the threat reasonably perceived by the correctional officer, whether the officer took efforts to temper the severity of his response, and the extent of the inmate’s injuries. (*Marquez v. Gutierrez* (9th Cir. 2003) 322 F.3d 689, 692.)

The absence of a significant injury does not preclude an excessive force claim. However, the extent of injury suffered by an inmate is one factor that may suggest whether the use of force could reasonably have been thought necessary in a particular situation. It also may provide some indication of the amount of force applied. (*Wilkins, supra*, 130 S.Ct. at p. 1178.) “The Eighth Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort ‘“repugnant to the conscience of mankind.” ’ ” (*Hudson, supra*, 503 U.S. at pp. 9-10.) Not every malevolent touch by a prison guard gives rise to a cause of action. (*Id.* at p. 9.) Accordingly, an inmate who complains of a push or shove that causes no discernable injury almost certainly fails to state a valid claim. (*Wilkins, supra*, 130 S.Ct. at p. 1178.)

Here, respondent presented evidence that appellant was loud, argumentative, and belligerent. Appellant did not present any competent contradictory evidence. Rather, appellant acknowledged that he argued with respondent and refused to leave the library without his papers. Under these circumstances, the use of some force by respondent to maintain order and discipline was objectively reasonable. Once appellant was down, he

was helped up and escorted to the program office. There was no evidence of a wanton, malicious or sadistic intent to cause harm.

Further, appellant did not suffer a discernable injury. He claims that he injured his face, knee and wrist but, at the time of the incident, appellant did not complain of any injuries and responding staff did not observe any injuries. This indicates that the force used was minimal.

The only material fact in dispute is whether appellant went limp or was shoved to the ground. Resolving that factual dispute in appellant's favor, i.e., assuming he was shoved to the ground, respondent nevertheless established that he did not breach his duty to act reasonably under the circumstances. In other words, respondent did not use unnecessary and excessive force. Appellant failed to establish the existence of a triable issue of material fact. Accordingly, respondent demonstrated that he was entitled to judgment as a matter of law.

Appellant argues that summary judgment should not have been granted because the librarian's declaration contradicts the declarations filed by other witnesses. However, no such inconsistencies exist. The librarian described what she witnessed from inside the library and explained that she did not see what transpired after appellant exited the library. The librarian's description of the part of the episode that she observed is consistent with the other declarations filed by respondent.

The trial court further noted that appellant's failure to comply with the Code of Civil Procedure section 437c, subdivision (b)(3) requirement of filing a separate statement of material facts, may constitute a sufficient ground for granting respondent's summary judgment motion. Appellant contends that the trial court abused its discretion in granting summary judgment on this ground without giving him an opportunity to correct the deficiency.

However, the trial court first reached a decision to grant summary judgment on the merits. The trial court merely noted that the failure to file a separate statement could be a ground for granting summary judgment. Under these circumstances, no abuse of discretion occurred.

DISPOSITION

The judgment is affirmed. In the interests of justice, no costs are awarded. (Cal. Rules of Court, rule 8.278(a)(5).)

LEVY, J.

WE CONCUR:

WISEMAN, Acting P.J.

GOMES, J.