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KATHY MARTIN
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STATE OF WASHINGTON
WALLA WALLA COUNTY SUPERIOR COURT

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|-------------------------|---|---------------------------------------|
| LINNIELL PHIPPS, JR., |) | |
| |) | No. 14-2-00245-0 |
| Plaintiff, |) | |
| |) | |
| v. |) | Order Granting Defendants' Motion for |
| |) | Summary Judgment |
| STEVEN SINCLAIR, et al, |) | |
| |) | |
| Defendants. |) | |

This matter came before the court upon all defendants' summary judgment motion to dismiss all claims of plaintiff. This court reviewed the following pleadings in support of and in opposition to the motion:

1. Declaration of Shari Hall, March 5, 2015, with attachments;
2. Declaration of Ronald Collins, March 6, 2015;
3. Defendants' Motion for Summary Judgment, March 17, 2015;
4. Affidavit of Linniell Phipps, March 26, 2015, with attachments;
5. Plaintiff[s] Motion Requesting Dismissal of Defense Motion for Summary Judgment, March 29, 2015;
6. Plaintiff[s] Response to the Defense Motion for Summary Judgment by a CR 56(e) Affidavit, April 3, 2015;
7. Plaintiff[s] Opposition to Motion for Summary Judgment Memorandum of

Law, April 14, 2015;

8. Plaintiff[’s] Request to Supplement His Argument in Opposition to Defendant[s’] Motion for Summary Judgment, April 18, 2015; and

9. Sealed recording of the February 10, 2014, confrontation inside the penitentiary library, which contains two videos, each showing the confrontation from a different view.

Disposition of Plaintiff’s Motions

1. To the extent that Plaintiff[’s] Request to Supplement His Argument in Opposition to Defendant[s’] Motion for Summary Judgment constitutes a motion for late filing of the brief or argument contained in the pleading, this motion is granted. The court has reviewed and considered Plaintiff[’s] Request to Supplement His Argument in Opposition to Defendant[s’] Motion for Summary Judgment before ruling on Defendants’ summary judgment motion.

2. Plaintiff’s Motion Requesting Dismissal of Defense Motion for Summary Judgment is denied.

Summary Judgment Motion Analysis

The civil complaint filed by Linniell Phipps lists the defendants as “Steven Sinclair, et al,” but does not list the additional defendants. From the review of the complaint, the court concludes that Linniell Phipps intended to sue Ronald Collins and Doug Brashear for assault and negligence as a result of the confrontation on February 10, 2014; Washington State Penitentiary Superintendent Donald Holbrook for negligent

supervision of Officers Collins and Brashear; Officers Juan Palomo, Ron Knight, and Christopher Bowman for unlawful strip searches; and all previously named persons and penitentiary librarian Jean Baker for the tort of outrage or intentional infliction of emotional distress. The body of the complaint does not assert any cause of action against Steven Sinclair, but this order granting summary judgment should be considered as dismissing any claims against Steven Sinclair arising out of the facts and conduct alleged in the complaint.

Linniell Phipps, in his two affidavits, claims that the videos provided to the court by defendants do not portray the incident in which he was involved on February 10, 2014. Nevertheless, in his affidavit, Linniell Phipps provides no testimony to dispute the facts regarding the confrontation in the penitentiary library to the extent those facts are outlined in the declaration of Ronald Collins. The court notes that the man filmed as attacking guards in the penitentiary library looks the same as the man pictured in photographs of Linniell Phipps filed in support of the summary judgment. The videos contain a date of February 10, 2014. In his arguments, Linniell Phipps agrees he was the aggressor in the attack although he claims he attacked an officer because the officer used racial slurs and because he believed the officer would eventually attack him.

Attachments to the declaration of Shari Hall show a long history of infractions by Linniell Phipps and the incident of February 10, 2014 confirms the danger in guarding and housing Linniell Phipps. Linniell Phipps presents no countervailing facts to render

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strip searches unreasonable or unlawful. Phipps presents no evidence as to the manner in which the strip searches are conducted and thus he presents no evidence as to any searches extending beyond permissible boundaries. Prison strip searches are generally considered reasonable. *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L.Ed.2d 447 (1979); *Story v. Foote*, 782 F.3d 968 (8th Cir. 2015); *Arruda v. Fair*, 710 F.2d 886 (1st Cir. 1983).

Defendants claim Linnell Phipps' suit is frivolous and seek an award of reasonable attorney fees and costs. The court finds Linnell Phipps' claims for assault, negligence, and the tort of outrage to be frivolous.

Summary Judgment Orders

Defendants' motion for summary judgment is granted. All claims against all defendants are dismissed with prejudice.

Plaintiff's suit is declared frivolous and the court grants defendants recovery of reasonable attorney fees and costs incurred in defending this suit. Defendants should file an affidavit of costs and fees for review by this court. Either the judge signing this order or another judge may award the amount of fees and costs.

DATED this 14 day of May, 2015.



GEORGE FEARING
SUPERIOR COURT JUDGE PRO TEM