

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DUSTIN LOFLAND)
)
 Plaintiff)
)
 v.) Civil No. 03-220-B-W
)
 CLINTON EVANS)
)
 Defendant)

Recommended Decision on Plaintiff's Motion for Partial Summary Judgment

Dustin Lofland is the plaintiff in this diversity action seeking remedies from Clinton Evans for injuries sustained when Evans allegedly assaulted him in a dormitory at the College of the Atlantic, in Bar Harbor, Maine. Lofland has filed a motion for partial summary judgment seeking a determination that there is no dispute of genuine material fact that Evans assaulted him and that he did not do so in self defense or in defense of another. (Docket No. 19.) Lofland, who is now proceeding pro se,¹ has not filed any responsive pleading and the time for doing so has passed. I now recommend that the Court **GRANT** Lofland partial summary judgment on Count I, the assault and battery count.

¹ On September 10, 2003, I held a telephone conference on and granted Evans's then-attorney's motion to withdraw. In the order memorializing that conference I included the following caution to Evans:

Since Mr. Druary filed his motion to withdraw the discovery deadline has passed, although the court granted an extension for the limited purpose of allowing three depositions to go forward. Also, since the motion to withdraw was filed, plaintiff's attorney has filed three other written motions, all of which have been given response due dates. **IF DEFENDANT WANTS ANY EXTENSIONS OF TIME ON ANY OF THE PENDING DEADLINES, AND THEY ARE LOOMING IMMEDIATELY, IT IS HIS OBLIGATION TO REQUEST THOSE EXTENSIONS HIMSELF.**

(Docket No. 29 at 2.)

Undisputed Material Facts

On October 27, 2002, at about 5:20 p.m., Clinton Evans approached Dustin Lofland while Lofland was sitting on a chair on the porch of “section G” of the Blair-Tyson dormitories on the College of the Atlantic campus. (Pl.'s SMF ¶ 1.) Lofland was sitting next to Madeleine Mariner. (Id. ¶ 2.) On his approach, Evans came right in front of Lofland and said, “Give me one reason why I shouldn’t hit you in the face right now!” (Id. ¶ 3.) Lofland remained seated with his hands in his coat pockets and calmly stated, “Give me a reason why you should?” (Id. ¶ 4.) While Lofland was still sitting, Evans punched Lofland in the face hitting Lofland’s face against the wall. (Id. ¶ 5.) After Evans punched Lofland in the face, Evans quickly walked off around the corner. (Id. ¶ 6.) As a result of the punch by Evans, three of Lofland’s front teeth were knocked out, the skin below Lofland’s lower lip was cut, and his jaw was sore. (Id. ¶ 7.)

On October 27, 2002, Lofland did not attack or try to attack Clinton Evans. (Id. ¶ 8.) Lofland did not make any statements that he might try to hurt Evans. (Id. ¶ 9.) The only persons present in the room when Evans approached Lofland were Clinton Evans, Dustin Lofland, and Madeline Mariner. (Id. ¶ 10.) Lofland did not attack or try to attack Madeline Mariner. (Id. ¶ 11.) Lofland did not make any statements that he might try to hurt Madeline Mariner. (Id. ¶ 12.)

Discussion

Lofland is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and the defendants are "entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). A fact is material if its

resolution would "affect the outcome of the suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), and the dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," id. I review the record in the light most favorable to Evans, the num opponent of summary judgment, and I indulge all reasonable inferences in his favor. See Feliciano de la Cruz v. El Conquistador Resort & Country Club, 218 F.3d 1, 5 (1st Cir.2000). However, the reality that Evans has failed to place a single one of the defendant's facts in dispute means that I deem the properly supported facts as admitted, see Faas v. Washington County, 260 F.Supp.2d 198, 201 (D.Me.2003). Evans's pro se status does not relieve him of his duty to respond, see Parkinson v. Goord, 116 F.Supp.2d 390, 393 (W.D.N.Y.2000) ("[P]roceeding pro se does not otherwise relieve a litigant of the usual requirements of summary judgment"), nor alter the Court's obligation to fairly apply the rules governing summary judgment proceedings, see Fed. R. Civ. P. 56; Dist. Me. Loc. R. Civ. P. 56. See Simpson v. Penobscot County Sheriff's Dept., 285 F.Supp.2d 75, 76 -77 (D. Me. 2003).

There is no question that this physical contact by Evans is sufficient contact under Maine jurisprudence of the tort of "assault and battery." See Zillman, Simmons, & Gregory, Maine Tort Law ¶ 1.01 at 1.1-1.3 (1994) (collecting a wide array of examples of "Mainers' waling on each other" sufficient to constitute the tort). Lofland has even generated undisputed facts that support a conclusion that Evans's intent was hostile, although the absence of hostility does not necessarily defeat an assault and battery claim. See id. § 1.02 at 1.3-1.6. As to the possibility that Evans was acting in self defense or

defense of another, see Wilder v. Jones, 149 A. 147, 147 (Me. 1930), there is no dispute of fact that he was not.

Lofland asks that the court enter judgment on Count I, the assault and battery count, and set the matter for hearing on damages. Count III seeks punitive damages, Count IV claims intentional infliction of severe emotional distress and Count V is one for negligent infliction of severe emotional distress. (Count II is for negligence and falls by the wayside with Lofland's success on Count I.) With Evans yet having an opportunity to object to this recommended decision, the future course of this litigation can be charted when a disposition of this motion is final.

Conclusion

For the reasons stated above I recommend that the Court **GRANT** the plaintiff's unopposed motion for partial summary judgment.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

September 23, 2004.

LOFLAND v. EVANS

Assigned to: JUDGE JOHN A. WOODCOCK JR.

Referred to:

Date Filed: 12/19/03

Jury Demand: Plaintiff

Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 28:1332 Diversity-Personal Injury

Nature of Suit: 320 Assault Libel
& Slander
Jurisdiction: Diversity

Plaintiff

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