

Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties Inc.* (1965), 2 Ohio St.2d 310. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Department of Rehabilitation and Correction* (1991), 61 Ohio Misc.2d 699, at 702.

{¶ 4} Plaintiff testified that following a shakedown of his cell, Parcell accused him of having more pills than he was prescribed for back pain and that she counted his medication with her bare hands. Plaintiff said that when he told Parcell that he could not take the contaminated medicine, she refused to send him to the medical center, and that his medicine was not replaced until the next day.

{¶ 5} Captain Roy Haynes, the first-shift supervisor, testified that he responded to plaintiff's informal complaint and that he spoke to plaintiff and Parcell who asserted that she was wearing gloves during the shakedown, and that before she counted plaintiff's medication, she changed into a fresh pair of gloves. Haynes stated that when inmates mix medications together or take them out of their original container, they become contraband. He also explained that shakedowns are conducted in search of contraband and that all COs wear rubber gloves.

{¶ 6} Larry Yoder, NCCI Inspector, stated that in accordance with the inmate grievance procedure, he also spoke with Parcell, and that while he determined that Parcell did not violate any policies, he did review the proper procedure for a shakedown with her.

{¶ 7} Plaintiff has offered no evidence that he suffered harm or that his health was affected by Parcell's action. Any such proof

must be established through expert testimony which was not offered in this case. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. Even if it could be shown that plaintiff were injured, there is insufficient proof that any such injury was a result of any negligent act or omission on the part of defendant's personnel.

{¶ 8} Plaintiff also asserts that his fan was broken during the shakedown, but he has failed to provide evidence that he owned a fan or that any fan was damaged.

{¶ 9} For the foregoing reasons, the court finds that plaintiff has not proven any of his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶ 10} In light of the above findings, the court concludes that CO Parcell did not act manifestly outside the scope of her employment, with malicious purpose, in bad faith, or in a wanton or reckless manner and, thus, she is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and the courts of common pleas do not have jurisdiction over any civil actions that may be filed against her based upon the allegations in this case.

{¶ 11} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

Entry cc:

Robert Lee Norris, #281-431
P.O. Box 8107
Mansfield, Ohio 44901

Plaintiff, Pro se

Douglas R. Folkert
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

LM/cmd
Filed March 10, 2005
To S.C. reporter March 22, 2005