IN THE COURT OF CLAIMS OF OHIO

RAYSHAN WATLEY :

Plaintiff : CASE NO. 2002-07151

Magistrate Steven A. Larson

v. :

MAGISTRATE DECISION

DEPARTMENT OF REHABILITATION

AND CORRECTION

:

Defendant

: : : : : : : : : : : : : : : : :

- {¶1} Plaintiff brought this action against defendant alleging negligence. The case was tried before a magistrate of the court on July 7, 2003, at the Southern Ohio Correctional Facility (SOCF).
- {¶2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff testified that on May 14, 2002, after taking a shower, he was instructed by Corrections Officer (CO) Christopher M. Barto to "cuff up" prior to exiting the shower area. Plaintiff alleges that CO Barto tightly cuffed his left wrist and bent it. Plaintiff testified that in response, he jerked his left arm away and retreated back into the shower stall. Plaintiff further testified that CO Barto subsequently threw approximately five bars of soap at him and sprayed him with a fire extinguisher in an effort to remove plaintiff from the shower. Shortly thereafter, Sergeant Troy Howard appeared and ordered plaintiff to cuff up. Plaintiff complied with the order and he was then escorted to his cell without further incident.
- {¶3} CO Barto testified that after cuffing plaintiff's left wrist, plaintiff grabbed him and pulled him up against the shower. According to CO Barto, plaintiff

began throwing bars of soap at him. In addition, CO Barto denied throwing soap at plaintiff or spraying plaintiff with a fire extinguisher.

- {¶4} In order to prevail on a negligence claim, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached such duty, and that the breach proximately caused plaintiff 's injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners 'health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136.
- The testimony presented in this case was contradictory. Since no other witnesses to the incident were available at trial, the court's determination of whether defendant breached a duty to plaintiff turns on witness credibility. Here, plaintiff asserts that his left wrist, right arm, and eyes were injured as a result of CO Barto's alleged misconduct. Nurse Mary Sanford examined plaintiff shortly after the incident, after which she issued a "medical exam report." Although Nurse Sanford noted an abrasion on plaintiff's left wrist, she made no note of any additional injuries and determined that plaintiff did not require any treatment. (Defendant's Exhibit B.)
- {¶6} Furthermore, plaintiff's testimony regarding the events in the shower is contradicted by CO Barto's account. CO Barto denied throwing bars of soap at plaintiff and spraying him with a fire extinguisher. Ultimately, plaintiff's testimony lacks credibility and is uncorroborated; therefore, plaintiff has failed to prove by a preponderance of the evidence that defendant breached its duty to provide for plaintiff's health, care, and well-being. Accordingly, judgment is recommended in favor of defendant.
- $\{\P7\}$ On another matter, the court finds that at all times relevant hereto, CO Barto acted within the course and scope of his employment with defendant and did not act with malice, in

bad faith or in a wanton or reckless manner with regard to plaintiff. Thus, the magistrate recommends that the court make a determination that CO Barto is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F), and that the courts of common pleas do not have jurisdiction over this matter.

 $\{\P8\}$ 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:

Rayshan Watley, #A347-921 P.O. Box 45699 Lucasville, Ohio 45699

Plaintiff, Pro se

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ML/cmd Filed June 22, 2004 To S.C. reporter July 19, 2004