

onto the range and into other cells. In response to the flooding, CO Bauer shut off the water to all of the cells on the range and directed porters to mop up the water. Inmates were given cleaning supplies to clean their own cells. For security, cells were opened one at a time by a CO who was stationed in a control booth at the end of the range.

{¶4} CO Crystal Minshall testified that she was the CO in the control booth when the range was flooded. She explained that from the control booth she could observe all of the cells on the range through cameras and could open and close individual cell doors electronically. CO Minshall reported that at 8:20 p.m. she observed one of the porters, inmate Westerfield, approach plaintiff's cell with cleaning supplies. She opened his cell door so that plaintiff could receive the cleaning supplies and saw an unknown substance thrown out of the cell onto Westerfield. She immediately closed plaintiff's cell door and reported the incident. (Defendant's Exhibit C.)

{¶5} CO Bauer explained that Westerfield was "bombed out," which means he had human waste thrown on him. In response to the likelihood that human waste had been thrown on Westerfield and onto the range, a "Bio-Cart," which contained bleach to be later diluted with water, was brought onto the range so that the entire area could be thoroughly cleaned and disinfected.

{¶6} Plaintiff testified that his cell had been opened twice that evening, and that when it was opened the second time, CO Bauer threw a pitcher of bleach into his face. Plaintiff stated that he reported the incident to Lieutenant Lyon who sent Tom Lykins, a registered nurse, to check him for injuries. Plaintiff testified that the nurse came to his cell but did not check him for injuries. Plaintiff charged that the lieutenant falsified the nurse's notes which documented that an examination failed to record obvious injuries to his eyes and instead reflected: "No redness of eyes

observed, but the odor of chlorine is present in area of his cell.” (Defendant’s Exhibit G.)

{¶7} Plaintiff reported to the infirmary the following morning complaining of injuries which he claimed were caused by bleach being thrown in his face. Upon examination, the nurse noted redness to plaintiff’s eyes with mild swelling to his upper and lower eyelids. (Defendant’s Exhibit H.) No treatment was prescribed for plaintiff’s eyes except cold compresses to reduce swelling.

{¶8} Plaintiff filed several Informal Complaint Resolutions in which he complained that bleach had been thrown in his face and that he was not receiving proper medical attention for his injuries. (Defendant’s Exhibits I, J, K, L, & M.) Defendant responded to all of plaintiff’s complaints with the notation that he did not need treatment.

{¶9} CO Bauer testified that he shut the water off about five minutes after the flooding was discovered. He explained that he was either in the “pipe close,” an area behind the cells which housed the water and sewer pipes, or in the “bull-pen” completing paper work the entire evening. He stated that he supervised the porters from his location in the bull pen. CO Bauer denied throwing bleach in plaintiff’s face and claimed that he was never on that part of the range that evening where plaintiff’s cell was located.

{¶10} CO Minshall substantiated CO Bauer’s testimony that Bauer had not thrown bleach in plaintiff’s face. She testified that the only time plaintiff’s cell door was opened that evening was when she opened it briefly for Westerfield and that CO Bauer was not on the range at the time.

{¶11} In order to prevail on his claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The duty of care owed to an inmate by

the custodian is one of ordinary care in the furtherance of the custodial relationship. See *Jenkins v. Krieger* (1981), 67 Ohio St.2d 314. Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances. *Antenori v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-688, 2001-Ohio-3945.

{¶12} The credibility of witnesses is a significant issue in this case, as there is conflicting testimony whether CO Bauer was on the range. Although plaintiff claims CO Bauer threw a pitcher of bleach in an act of retaliation, CO Minshall testified that she had opened plaintiff's cell only one time and that CO Bauer was not on the range at the time. CO Bauer denied ever being on the range that evening. Nurse Lykins reported that he checked plaintiff soon after he claimed bleach was thrown in his face and found no medical evidence to support that claim. In short, upon review of the evidence, and considering the credibility of the witnesses, the court concludes that plaintiff has failed to show, by a preponderance of the evidence, that CO Bauer threw bleach in plaintiff's face.

{¶13} With regard to plaintiff's claim that he did not receive adequate medical care for his injuries, the court finds that plaintiff failed to prove that he was, in fact, injured or that any medical care fell below accepted community standards. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127.

{¶14} Finally, plaintiff alleges that there was a coverup by nurse Lykins and the staff who investigated his allegations and responded to his complaints. Plaintiff has failed to offer any evidence to support his allegations that Lykins' notes were fabricated or that the staff participated in a coverup.

{¶15} Based upon the evidence presented, plaintiff has failed to establish his claims of negligence by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶16} *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

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