[Cite as *Tate v. Marion Correctional Inst.*, 2003-Ohio-3566.]

IN THE COURT OF CLAIMS OF OHIO

PHILLIP TATE	:	
Plaintiff	:	
v.	:	CASE NO. 2003-01733-AD
MARION CORRECTIONAL INSTITUTION	:	MEMORANDUM DECISION
Defendant	:	

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{¶1} Plaintiff, Phillip Tate, an inmate incarcerated at defendant, Marion Correctional Institution, asserted he suffered a hand injury when he was struck by a clipboard thrown by defendant's employee Officer Shotwell. Plaintiff explained, at approximately 10:00 A.M. on October 2, 2002, he was stationed at the institution's K-Cellblock Officer's Desk signing a required form when Officer Shotwell became irritated with him. Plaintiff related Officer Shotwell was standing about five feet away from the Officer's Desk when he, "tossed a steel and wooden clipboard in a frisbee-like fashion onto the desk." Plaintiff maintained the thrown clipboard struck him flush on the back of his hand causing intense pain. Plaintiff stated the incident was never reported by defendant's staff. Plaintiff declared he filed a complaint regarding the events of October 2, 2002, on or about October 8, 2002. On October 15, 2002, plaintiff was escorted to the institution infirmary to have his hand examined. According to plaintiff, an incident report was filed at that time. Plaintiff has contended he suffered "intense and crippling pain" in his hand for ten days after being struck with the clipboard. Plaintiff professed he could not use his right hand for even mundane activity due to pain, swelling, and tenderness. Consequently, plaintiff filed this complaint seeking to recover $2,000.00 in damages resulting from trauma

to his right hand. Plaintiff was excused from submitting any filing fees for this action.

{¶2} Plaintiff filed an affidavit from a fellow inmate, Andrew Davis-Bey. In his affidavit, Andrew Davis-Bey wrote he recalled an incident where plaintiff complained he could not use his right hand after he was observed typing with his right hand at a slower speed than he normally typed. Andrew Davis-Bey also recalled he noticed plaintiff's hand, "was red and swollen." Andrew Davis-Bey wrote he observed the condition of plaintiff's hand, "for a few days in October."

{¶3} Defendant acknowledged Officer Shotwell threw a clipboard which struck plaintiff upon the hand. Defendant set the date of this incident at September 21, 2002. Defendant represented the events of September 21, 2002 by stating, "CO Shotwell most likely bumped or tossed a non-metal clipboard on the desk that hit inmate Tate's hand." Although defendant admitted its employee, Officer Shotwell struck plaintiff's hand with a clipboard, defendant has denied any liability in this matter.

{¶4} Essentially, defendant has argued plaintiff has failed to produce evidence establishing he suffered an injury and resulting damage from Officer Shotwell's act. Defendant pointed out plaintiff did not seek medical attention on September 21, 2002, for any injury he may have received. Although plaintiff filed an informal complaint on September 21, 2002, mentioning the September 21, 2002 clipboard tossing incident, he did not complain of any injury caused by being struck in the hand with a clipboard. On October 15, 2002, plaintiff was escorted to the institution infirmary for a medical examination of his hand. This examination was conducted as a response to a formal grievance plaintiff had filed concerning the September 21, 2002 incident. Upon examination, plaintiff denied his hand had been injured by the thrown clipboard. Plaintiff was seen by defendant's medical personnel on three separate occasions between September 21, 2002 and October 15, 2002. On these separate medical visits, plaintiff did not complain of a hand injury and there is no record a hand injury was observed, despite the fact plaintiff's extremities were examined.

{¶5} Plaintiff responded to defendant's arguments. Plaintiff reasserted he was in pain and experienced limited use of his right hand for a period of ten days following the

initial event of September 21, 2002. Plaintiff did not file any convincing supporting documentation to corroborate his assertions of pain and loss function in his hand. The trier of fact finds insufficient evidence has been produced to prove plaintiff was injured to the degree of severity claimed. To support his damage claim, plaintiff cited *Smallwood v. Ohio Dept. of Rehab. & Corr.* (1997), 94 Ohio Misc. 2d 47, for the proposition an inmate plaintiff is permitted to testify about the disabling nature and loss of function resulting from an injury negligently inflicted by defendant's employee. The court in *Smallwood,* id found sufficient evidence was presented to prove a disabling injury occurred with evidence establishing past and future pain and suffering. In the instant claim, plaintiff has failed to offer evidence to the trier of fact proving his damages. Plaintiff noted the case of *Turner v. Barrett* (1980), 68 Ohio App. 2d 80, is illustrative of his contentions concerning pain and suffering testimony. In *Turner*, id, a minor injured party was permitted to testify about the months of pain and suffering he experienced after being struck on the hand and hip with a baseball bat that had nearly a dozen nails protruding from it. The court, in the present claim, recognizes plaintiff may offer subjective narrative evidence concerning his pain and suffering. However, the trier of fact is free to believe all, part, or none of the narrative presented. *Rogers v. Hill* (1998), 124 Ohio App. 3d 468. Furthermore, the trier of fact is entitled to conclude the impact of a thrown clipboard striking plaintiff's hand is insufficient to cause plaintiff to sustain the degree of injury claimed. Also, supporting a finding of minor insignificant injury is the fact plaintiff never sought medical attention for an injury that allegedly left him disabled for a period of ten days.

{¶6} In order to prevail, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that day, and that defendant's breach of duty caused his 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 prisoner's health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App. 3d 132, 136. 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.

{¶7} All evidence shows defendant's employee propelled a clipboard which struck plaintiff in the hand. This act is sufficient to prove negligent conduct. The negligent conduct on the part of defendant's employee did cause some minor injury to plaintiff's hand. Consequently, damages for this inconsiderable injury shall be determined accordingly. Plaintiff has proven he is entitled to pain and suffering damages only. In order to recover pain and suffering damages, plaintiff must prove he experienced conditions that are the natural and proximate result of the tortious act of defendant. *Roland Bros. v. Youngstown* (1996), 115 Ohio App. 3d 498. No recovery can be had where it is not certain plaintiff suffered any damage. *Blank v. Snyder* (1972), 33 Ohio Misc. 67.

{¶8} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. of Ohio* (1995), 102 Ohio App. 3d 782. Evidence has shown plaintiff has suffered damages for pain and suffering resulting from his minor injury. The damages proven amount to $10.00.

{¶9} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of $10.00. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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