

time of the personal injury occurrence, plaintiff was sixty-two years and was recovering from a stroke suffered about five weeks earlier. Plaintiff claims the bruises he suffered from the trip and fall took weeks to heal. Plaintiff also claimed that when he fell unspecified objects became imbedded in his left eye causing an infection which took more than a year to treat. Furthermore, plaintiff alleged all healing from any bruises or scrapes he sustained was prolonged due to the fact he is a diabetic. Additionally, plaintiff professed he developed a one inch scar on his forehead from a wound received when he fell. Therefore, based on all injuries perceived, plaintiff has maintained he is entitled to the damages stated in his complaint. Plaintiff submitted the filing fee on July 1, 2003.

{¶3} Defendant asserted plaintiff has failed to offer sufficient evidence to establish liability for any injury received on September 12, 2001. Defendant contended plaintiff has failed to produce evidence to show MACI personnel were negligent. Defendant disputed plaintiff's allegation that a defective broken step box was used when plaintiff tried to exit the institution bus on September 12, 2001. Defendant related the step box was not broken or defective in any way. Defendant argued plaintiff did not report his trip and fall was caused by a damaged step box. Defendant submitted a copy of an incident report compiled shortly after plaintiff was injured. No mention was made regarding a damaged step box. Information in the incident report indicated plaintiff, when asked what happened, stated he fell when he tripped over his leg irons. Defendant insisted the step box in use was not broken and would not have been used if it had been damaged in any way.

{¶4} Defendant also filed a copy of a medical examination report which documented plaintiff's course of medical treatment after he was injured. According to this report, plaintiff informed defendant's treating nurse that he fell from a MACI bus and struck his head, elbow, and knee. The treating nurse upon examination observed plaintiff had a large hematoma above his left eye, small open scrapes on his left elbow, and an abrasion on his left knee. None of plaintiff's wounds were openly bleeding at the time he was examined. Plaintiff's injuries were cleaned, antibiotic ointment was applied to affected areas, and an anti-inflammatory/analgesic medication was administered. Plaintiff was then released from medical care to his housing unit.

{¶5} On July 29, 2003, plaintiff filed a motion for extension of time to submit a response to defendant's investigation report. On August 18, 2003, plaintiff filed the

response.

{¶6} Plaintiff insisted the step box used by defendant on September 12, 2001, was damaged and defective. Plaintiff filed a statement from a fellow inmate, William Pinkelton, who witnessed plaintiff's injury occurrence and observed the condition of the step box. Pinkelton related the wooden step box "was in two, as if the screws had come out or if the glue was no longer holding." Plaintiff also submitted a written statement from an inmate, Robert Montague, who noted his observations about the step box. Montague described the step box as "damaged on both ends with broken boards and screws exposed on both ends." Additionally, plaintiff submitted a statement from a third inmate, William Smith, who related the step box used on September 12, 2001 was in a damaged state.

{¶7} In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach of duty caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. The duty owed to an inmate in the context of the custodial relationship is one of reasonable care and protection from unreasonable risks. *McCoy v. Engle* (1987), 42 Ohio App. 3d 204. Reasonable and 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.

{¶8} In the instant claim, plaintiff has proven, by a preponderance of the evidence, defendant breached its duty of care owed to him. Consequently, defendant is liable to plaintiff for damages which can be proven. Although evidence is in dispute regarding the condition of the step box and, therefore, negligence cannot be established based on defendant's use of a defective device, negligence on the part of defendant has been shown. The court concludes defendant was negligent in failing to provide physical assistance to plaintiff when he was exiting the bus on September 12, 2001. Considering the facts plaintiff has recently experienced a debilitating stroke and was shackled, plaintiff obviously needed some sort of help in getting off the bus. Defendant failed to provide that help and is therefore liable for resulting damages.

{¶9} In the present action, plaintiff has offered proof he suffered minor injuries when he fell while emerging from defendant's bus. Although plaintiff has claimed damages in the amount of \$2,500.00, the court finds plaintiff has failed to prove he suffered

damages in the amount claimed. Damages for plaintiff's inconsiderable injuries 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 recover can be had where it is not certain plaintiff suffered any damage. *Blank v. Snyder* (1972), 33 Ohio Misc. 67.

{¶10} 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 as suffered damages for pain and suffering resulting from his minor injury. The damages proven amount to \$200.00, plus the \$25.00 filing fee.

{¶11} 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 \$225.00, which includes the filing fee. 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.

DANIEL R. BORCHERT
Deputy Clerk

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Filed 9/10/03

Sent to S.C. report 10/3/03