

worn out shoes. Consequently, plaintiff filed this complaint seeking to recover \$57.15, the price paid for the new shoes, \$10.00, the replacement costs of six pairs of socks, \$25.00 for filing fee reimbursement, \$250.00 for pain and suffering from personal injury, and \$2,000.00 for punitive and exemplary damages. Plaintiff set his total damage claim at \$2,342.15.

{¶5} 5) Plaintiff submitted a copy of a theft/loss report regarding the loss of his ordered shoes. This report compiled by defendant's employee, Sgt. Reghett, contained information which confirmed the shoes plaintiff ordered were received by defendant's staff member, Sgt. Kowach, but were never forwarded to the institution package room. Plaintiff offered a signed statement from Sgt. Kowach, which related the following: "inmate, if I signed for the shoes, then they were delivered to the package room."

{¶6} 6) Defendant admitted a package containing plaintiff's ordered shoes was not delivered to the T.C.I. package room. The T.C.I. package room received two mailed items for plaintiff, one on June 3, 2002 and another on July 1, 2002. These mailed items were forwarded from the institution warehouse. Defendant cannot identify the items received from the T.C.I. warehouse. Defendant admitted liability for the replacement costs of plaintiff's shoes, plus filing fee reimbursement. However, defendant has contended plaintiff has either failed to prove he is entitled to additional damages or is barred as a matter of law from recovery. Defendant explained plaintiff received medical treatment on August 23, 2002, for blisters and a fungal infection. Defendant asserted plaintiff did not complain at the time he received treatment that his foot problems were attributable to the shoes he was wearing.

{¶7} 7) On April 14, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his blisters and suffering resulting from blisters were proximately caused by negligence on the part of defendant in losing his new shoes. Plaintiff asserts the nurse that treated him for his blisters would confirm his assertion. However, plaintiff failed to provide a

statement from this nurse.

CONCLUSIONS OF LAW

{¶8} 1) Plaintiff's request for punitive damages is denied. The state cannot be sued for punitive damages. *Drain v. Koysdar* (1978), 54 Ohio St. 2d 49.

{¶9} 2) In respect to the loss of his shoes, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶10} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm claimed. *Parks v. Department of Rehabilitation and Correction* (1985), 85-07546-AD.

{¶11} 4) 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. 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.

{¶12} 5) In a negligence claim plaintiff has the burden of proving, by a preponderance of the evidence, the existence of a duty, the breach of that duty, and injury resulting proximately therefrom. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 21, Ohio OP.3d 177, 423 N.E. 2d 467. 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, 537 N.E. 2d 665.

{¶13} 6) Plaintiff has failed to produce sufficient evidence to prove any personal injury he may have suffered was proximately caused by any negligent act or omission on the part of defendant. Plaintiff has failed to prove any damages to his socks were proximately caused by any negligence on the part of defendant.

{¶14} 7) The court finds defendant liable to plaintiff in the amount of \$57.15 plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶15} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is GRANTED in part and DENIED in part in favor of the plaintiff;

{¶18} 2) Defendant (Trumbull Correctional Institution) pay plaintiff (David M. Szakacs) \$82.15 and such interest as is allowed by law;

{¶19} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

David M. Szakacs #388-606 Plaintiff, Pro se
P.O. Box 901
Leavittsburg, Ohio 44430

Gregory C. Trout, For Defendant
Chief Counsel
Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

DRB/tad
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