

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.

{¶5} 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.

{¶7} 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.

{¶8} *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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