

food and water; and that on numerous occasions he was, without provocation, sprayed with chemical mace.

{¶4} Plaintiff further alleges that following the April 1993 prison riot several SOCF Corrections Officers (CO) engaged in a pattern of religious and racial intimidation, physical and mental abuse, and labeled plaintiff a "snitch," thus subjecting him to retaliatory conduct by other inmates. Specifically, plaintiff testified that on January 6, 1994, COs Turner and Cox and Lieutenant Bell conducted a shakedown of his cell. Plaintiff testified that during the shakedown CO Cox hit him in the mouth. CO Cox testified that he does not recall shaking down plaintiff's cell on January 6, 1994. CO Turner testified that he had no knowledge of racial slurs uttered against plaintiff.

{¶5} In April 1994, plaintiff was transferred from SOCF to the Corrections Reception Center (CRC) located in Orient, Ohio. Inmate Darnell Alexander testified that living conditions were terrible during the time he and plaintiff were housed at CRC.

{¶6} In order for plaintiff to prevail upon his claim of negligence, he 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 owed to an inmate by his custodian is one of ordinary care in the furtherance of the custodial relationship. *Jenkins v. Krieger* (1981), 67 Ohio St.2d

314; *Scebbi v. Dept. of Rehab. & Corr.* (March 21, 1989), Court of Claims No. 87-09439, unreported. The requisite standard of care is that which is reasonable and ordinary for the health, care and well-being of the inmate. See *Clemets v. Heston* (1985), 20 Ohio App.3d 132.

{¶7} In *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, the Supreme Court of Ohio established plaintiff's burden of proof in a medical malpractice case:

{¶8} "*** in order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon [in this case a nurse] of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct result of such doing or failing to do some one or more of such particular things."

{¶9} In *Buerger v. Ohio Dept. of Rehab. & Corr.* (1989), 64 Ohio App.3d 394, the Tenth District Court of Appeals found the *Bruni* standard applicable to a claim of medical malpractice brought by an inmate. Plaintiff failed to present expert evidence regarding a lack of proper medical care. Accordingly, the court finds that

plaintiff failed to prove that defendant was negligent in its medical care and treatment of plaintiff.

{¶10} Upon review of the evidence and assessing the credibility of the witnesses, the court finds that plaintiff failed to prove his remaining claims of negligence by a preponderance of the evidence. Plaintiff offered only testimonial evidence in support of these claims. The court finds such testimony lacked credibility. Accordingly, the evidence fails to support plaintiff's claims of abuse and his claims of denial of water, food and clothing.

{¶11} This court has consistently held that it will not interfere with the day-to-day operations of prisons, to include the classification and placement of prisoners. See *Bell v. Wolfish* (1979), 441 U.S. 520. This is particularly true regarding the manner in which SOCF prison officials housed inmates following the April 1993 riot. Defendant is charged with a duty of ordinary care in its treatment of inmates; plaintiff failed to prove that defendant breached its duty in this instance.

{¶12} For the foregoing reasons, judgment shall be rendered in favor of defendant.

RUSSELL LEACH
Judge

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