

[Cite as *Washington v. Dept. of Rehab. & Corr.*, 2017-Ohio-8466.]

CHARLES WASHINGTON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00555

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for the destruction of his personal property. The issues of liability and damages were not bifurcated and the case proceeded to trial.

{¶2} Plaintiff testified that on November 6, 2015, he discovered that his cell had been searched by corrections officers while he was away at chow. Plaintiff stated that for the most part his belongings remained in their proper places. However, plaintiff testified that his headphones had been snapped and placed on top of the television. Plaintiff believed that corrections officer Scott was responsible for the broken headphones, although he admitted that he did not have any personal knowledge that Scott broke his headphones. Nevertheless, plaintiff maintained that Scott had previously harassed him and that as a result, he had filed complaints about Scott's behavior. Plaintiff testified that Scott engaged in inappropriate behavior, opened his mail, discarded his kites, which are letters of communication within the prison, made threats, and otherwise disrespected plaintiff. As a result of what plaintiff considered to be harassment carried out by Scott, plaintiff concluded that Scott must have broken his headphones perhaps in retaliation for the complaints.

{¶3} Plaintiff testified that he filed a complaint concerning the broken headphones and provided a copy of the complaint to his unit manager. In response to the complaint,

Scott confiscated his broken headphones. Plaintiff also received a contraband slip for the headphones. Plaintiff testified that a few weeks later, he received “state pay” and requested that his headphones be mailed out of the institution so that they could be repaired. Plaintiff completed a withdrawal slip, also known as a cash slip, that is dated January 8, 2016; however, plaintiff states that the date is incorrectly listed and should be December 9, 2015. Plaintiff testified that he contacted Ms. Mahlman about mailing his headphones out of the institution, but she refused to mail the headphones out of the institution. As a result of Ms. Mahlman’s decision, plaintiff contacted the chief inspector’s office by filing a grievance, but plaintiff’s grievance was apparently denied. No other witnesses testified.

{¶4} At the conclusion of plaintiff’s case, defendant moved pursuant to Civ.R. 41(B)(2) to dismiss any alleged claim of “harassment.” *Peters v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-1048, 2015-Ohio-2668, ¶ 10. The magistrate recommended dismissal of any such claim.

{¶5} Turning to plaintiff’s claim regarding his headphones, “[c]onversion is ‘the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights.’” *Allan Nott Ent., Inc. v. Nicholas Starr Auto, L.L.C.*, 110 Ohio St.3d 112, 2006-Ohio-3819, ¶ 36, quoting *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96 (1990).

{¶6} “In order to sustain an action for negligence, a plaintiff must show the existence of a duty owing from the defendant to the plaintiff or injured party, a breach of that duty, and that the breach was the proximate cause of resulting damages.” *Sparre v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-381, 2013-Ohio-4153, ¶ 9.

{¶7} “[Defendant] does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but it does have the duty to make reasonable attempts to protect such property.” *Triplett v. S. Ohio Corr. Facility*, 10th Dist. Franklin No. 06AP-1296, 2007-Ohio-2526, ¶ 7. “In conducting a shakedown of an inmate’s

personal property, correction officers must exercise reasonable and ordinary care.” *Moore v. Ohio Dept. of Rehab. & Corr.*, 61 Ohio Misc.2d 214, 215 (Ct. of Cl.1988); see also *Lister v. London Corr. Inst.*, Ct. of Cl. No. 2009-06524-AD, 2009-Ohio-7185, ¶ 5.

{¶8} “[A]n inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Corr. Inst.*, Ct. of Cl. No. 1997-09261-AD (Mar. 3, 1998). However, plaintiff must prove he was the rightful owner of the destroyed property and the destroyed items were permissible.” *Noble v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2006-02838-AD, 2006-Ohio-7248, ¶ 7.

{¶9} Upon review of the evidence, the magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence. There is no dispute that plaintiff owned the headphones and that on November 6, 2015, the headphones were broken while plaintiff was at chow. However, plaintiff theorized that Scott was responsible for his broken headphones although he admitted that he did not have personal knowledge that Scott broke his headphones. Furthermore, plaintiff did not present any evidence regarding who broke his headphones or even who searched his cell while he was away at chow.

{¶10} With respect to plaintiff’s allegation that defendant would not allow him to mail his property out of the institution, it is well-established that “a correctional institution cannot be held liable for the loss of contraband property that an inmate has no right to possess.” *Triplett* at ¶ 7 citing *Beaverson v. Ohio Dept. of Rehab. & Corr.*, 61 Ohio Misc.2d 249, 250 (Ct. of Cl.1988); see also *Maxwell v. Richland Corr. Inst.*, Ct. of Cl. No. 2007-03935-AD, 2008-Ohio-2868, ¶ 18; *Garrett v. Richland Corr. Inst.*, Ct. of Cl. No. 2003-10872-AD, 2004-Ohio-2622, ¶ 7; *Strutton v. Ohio Dept. of Rehab. & Corr.*, 61 Ohio Misc.2d 248, 249 (Ct. of Cl.1988). There is no dispute that plaintiff received a contraband slip for the headphones.

{¶11} Plaintiff nevertheless maintains that defendant violated Ohio Administrative Code 5120-9-55 titled “contraband” by destroying his personal property after only seven days. Ohio Adm.Code 5120-9-55(C)(1)(c) provides that “Minor contraband, valued at one hundred dollars or less, may, thirty days after confiscation, be destroyed, donated, utilized by the institution for training or other official purposes * * *.”

{¶12} The magistrate finds that plaintiff did not present any evidence that defendant destroyed his personal property less than 30 days after it was confiscated. Indeed, there is no evidence as to when or even if plaintiff’s headphones were destroyed. Additionally, plaintiff’s withdrawal or cash slip is dated January 8, 2016, which is more than 30 days after his headphones were confiscated. Furthermore, even if the magistrate accepted plaintiff’s testimony that the date should read December 9, 2015, that is still more than 30 days after plaintiff’s property was confiscated on November 6, 2015. As a result, there is no credible evidence that plaintiff’s property was destroyed less than 30 days after his headphones were confiscated.

{¶13} Based upon the foregoing, the magistrate recommends that judgment be entered in favor of defendant.

{¶14} A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

GARY PETERSON
Magistrate

cc:

Charles Washington, #A515-250
P.O. Box 120
Lebanon, Ohio 45036

Frank S. Carson
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

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