

[Cite as *Jeter v. Dept. of Rehab. & Corr.*, 2017-Ohio-9440.]

RAVON JETER, SR.

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00797-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Ravon Jeter, Sr., an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on September 25, 2015, while housed at defendant’s Southern Ohio Correctional Facility (“SOCF”) another inmate entered his cell causing his television to fall off its stand and break. Plaintiff conceded that defendant provided him with a replacement television. However, upon plaintiff being sent to segregation the replacement television was also taken from him.

{¶2} Plaintiff seeks damages in the amount of \$198.50, for the destruction of his Clear Tune television by another inmate and the loss of the replacement television in the same amount as the result of it being confiscated by defendant’s agents.

{¶3} Plaintiff seeks damages in the amount of \$500.00 for the replacement of both televisions. Plaintiff was not required to submit the \$25.00 filing fee.

{¶4} Defendant submitted an investigation report denying liability in this matter. Initially, defendant stated the Cleartune television was broken by plaintiff, not another inmate which plaintiff alleged. Furthermore, defendants determined the broken TV was contraband and plaintiff signed a DRC 4219 to destroy the set. ODRC denied it provided plaintiff with a loaner television. Defendant related on December 18, 2015, plaintiff was issued a conduct report and later found guilty of rule 44, 49, and 51 violations. At that time it was discovered that the AMP’D TV in plaintiff’s possession

had the identification number scratched off. Defendant determined plaintiff was not the owner of the AMP'D TV and it was subsequently destroyed by the hearing officer as contraband. Accordingly, defendant believes plaintiff claims should be denied.

{¶5} Plaintiff submitted a response to the investigation report. Plaintiff disputes defendant's contentions contained in the investigation report. Plaintiff stated he did not break the set, but another inmate. Furthermore, he contends he was given the loaner television to replace the Clear Tune set which he acknowledged he authorized to be destroyed. Plaintiff also asserted he lost the loaner television due to being sent to segregation. Accordingly, plaintiff asserted he should be granted judgment for the loss of both televisions.

{¶6} Plaintiff also submitted the purported affidavit of fellow inmate Brandon Richardson. This was a statement not an affidavit since it was not sworn to in front of a notary. Furthermore, Richardson did not see how the Clear Tune set was broken or by whom so this statement has very little probative value.

CONCLUSIONS OF LAW

{¶7} In order to prevail, in a claim for negligence, 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 proximately caused his damages. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶8} "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided ... by the court ..." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App.3d 744, 2003-Ohio-5333, 798 N.E.2d 1121, ¶ 41 (2nd Dist.), citing *Miller v. Paulson*, 97 Ohio App.3d 217, 221, 646 N.E.2d 521 (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989).

{¶9} This court in *Mullett v. Department of Correction*, 76-0292-AD (1976), held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶10} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University*, 76-0368-AD (1977).

{¶11} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant's conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶12} In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82, 118 N.E.2d 147 (1954).

{¶13} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E.2d 548 (1964). Plaintiff asserted his Clear Tune television was broken by another inmate while defendant stated plaintiff broke the set. The statement plaintiff submitted from inmate Richardson lacks probative value since he did not witness who broke the television. Where evidence is of equal weight the burden has not been sustained by the party asserting any given proposition. *Klunk v. Hocking Valley Railroad Co.*, 74 Ohio St. 125, 77 N.E. 752 (1906); *Ottgen v. Garey*, 41 Ohio App. 499, 181 N.E. 485 (6th Dist. 1932). Accordingly, plaintiff failed to sustain his burden of proof that his set was broken by another inmate.

{¶14} Plaintiff authorized the destruction of his set by signing the DRC 4219 form. Accordingly, when plaintiff authorizes the destruction of his television set he cannot be granted damages based upon his own actions.

{¶15} While the evidence reflects that ODRC personnel did give plaintiff an AMP'D TV to replace the broken one. It appears pursuant to OAR 5120-9-32 that once plaintiff accepts ODRC's offer to compromise the claim that is the end of the process. OAR 5120-9-32(E) in pertinent part states:

"If an inmate accepts a non-monetary offer to compromise and the documented receipt of the replacement items shall constitute a full and complete release of liability for the property claim. Such a non-monetary compromise shall be the final remedy against the defendant of rehabilitation and correction and the state of Ohio."

{¶16} The Supreme Court of Ohio has held that "[t]he language in R.C. 2743.02 that 'the state' shall 'have its liability determined***in accordance with the same rules of law applicable to suits between private parties***means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion." *Reynolds v. State*, 14 Ohio St.3d 68, 70, 471 N.E.2d 776 (1984); see also *Von Hoene v. State*, 20 Ohio App.3d 363, 364, 486 N.E.2d 868 (1st Dist. 1985). "Prison administrations are provided 'wide ranging' deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institution security." *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). Accordingly, plaintiff has not stated a cause of action based upon ODRC decision with respect to the replacement television.

{¶17} Furthermore, even if judgment was rendered in favor of plaintiff, contrary to statute, plaintiff has failed to prove, by a preponderance of the evidence, the amount

of damages he sustained for the loss of the AMP'D Television. *DeLong v. Department of Rehabilitation and Correction*, 88-06000-AD (1988).

{¶18} Therefore, judgment is rendered in favor of defendant.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk