

[Cite as *Reno v. Dept. of Rehab. & Corr.*, 2018-Ohio-1914.]

SHANE RENO

Plaintiff

V.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00917-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

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FINDINGS OF FACT

{¶1} Plaintiff, Shane Reno, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on November 3, 2016, at approximately 8:30 a.m., while housed at defendant’s Ross Correctional Institution (“RCI”), he was taken to segregation. Although he requested he be allowed to pack-up his personal property his request was refused. Plaintiff related upon receiving the Inmate Property Record all of his property was missing. Plaintiff noted the record indicated that his property was not packed until 3:00 p.m.

{¶2} Plaintiff asserted the following property was lost: AMP’D television, remote control, JP5 tablet with earbuds, Nike Fusion tennis shoes, two velour blankets, two bath towels, a fan, two pairs of pro mesh shorts, two long sleeve t-shirts, three short sleeve t-shirts, a tank top, six pairs of socks, five pairs of boxer undershorts, a pair of Timberland boots, and a pair of work gloves. Plaintiff seeks damages in the amount of \$613.70. The \$25.00 filing fee was submitted with the complaint.

{¶3} Plaintiff’s grandmother, Deborah King, submitted checking account statements from her bank account which she asserted revealed the purchase of items for plaintiff. A purchase on February 9, 2016, in the amount of \$102.91 for shoes and boots from Access; a purchase on May 17, 2016, in the amount of \$94.50 to JPay, Inc. for a video game player; two purchases on August 4, 2016, from Access in the amount

of \$100.35 and \$198.41 for food, clothing, blanket, towels, washcloths, socks, underwear, t-shirts, and shorts.

{¶4} Plaintiff's grandmother also submitted copies of an Inmate Property Record dated October 11, 2016, which evidenced plaintiff possessed a AMP'D Television, JP4 Player, a remote, one blanket, one pair of gloves, six t-shirts, Nike tennis shoes, two pairs of gym shorts, seven pairs of socks, four towels, five pairs of undershorts, and two washcloths.

{¶5} Plaintiff's grandmother submitted a copy of an Inmate Property Record dated November 3, 2016, at 9:30 a.m. which listed one t-shirt, a pair of Timberland boots, Nike gym shorts, but none of the other property plaintiff asserted was missing. On November 3, 2016, plaintiff signed the following: "I certify that the above listed items are a complete and accurate inventory of all my personal property."

{¶6} Defendant submitted an investigation report denying liability. Defendant's investigation revealed on the day in question plaintiff went to the Captain's office and requested to be placed in protective custody because of security threat group ("STG") had a hit out on him. At 9:38 a.m. he was sent to segregation. Two DRC 2055's (Inmate Property Records) were compiled, one for the property taken from his person before being assigned to segregation and the other for property taken while in segregation. On November 4th, plaintiff reported his personal property was missing. Defendant then completed a DRC4194, Theft/Loss Report. ODRC's agent, Officer Stewart, conducted an investigation. Stewart interviewed plaintiff's cellmate who gave him plaintiff's cup, a pair of gloves, and shower shoes. Plaintiff's cellmate stated plaintiff "owed a lot of people" so he gave away most of his property prior to being sent to segregation.

{¶7} Defendant submitted two Inmate Property Records dated November 3, 2016. ODRC submitted a copy of the Theft/Loss Record dated November 4, 2016, wherein plaintiff lists the alleged missing property. However, defendant conducted an

investigation and concluded plaintiff gave his property away prior to being sent to segregation.

{¶8} Another Inmate Property Theft/Loss Report dated November 16, 2016, was submitted with this report, plaintiff lists his television, JP5, Nike tennis shoes, a blanket, and two towels as missing. Again, defendant's investigation revealed plaintiff gave his personal property away prior to requesting to be placed in protective custody. Defendant contended plaintiff was in debt to other inmates and to satisfy his debt he gave his property away. He now wants defendant to reimburse him for the property he gave away.

{¶9} Defendant submitted a conduct report dated October 11, 2016, wherein plaintiff requested a transfer out of his unit due to owing \$200.00 to other inmates. As a result of this report, a hearing was held and plaintiff was found guilty of a rule 45 violation, dealing. This decision was affirmed by the Chairman of the Rules Infraction Board. Defendant asserted plaintiff was engaged in the same conduct on November 3, 2016, as he had been engaged in on October 11, 2016. Accordingly, defendant asserted plaintiff's claim should be denied.

{¶10} Plaintiff's grandmother filed a response to the investigation report on behalf of her grandson. She denied that plaintiff gave away his property and while acknowledging Shane was involved in purchasing tobacco, alcohol, and gambling and he incurred debts to other inmates, she stated she paid his debts. She stated she saved all receipts to prove this, however, this information was not provided to the court. Finally, she alleges defendant's agents stole all of the missing property and judgment should be granted in plaintiff's favor.

#### CONCLUSIONS OF LAW

{¶11} 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).

{¶12} "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).

{¶13} 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.

{¶14} 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).

{¶15} 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).

{¶16} 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).

{¶17} 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's statement lacks credibility. Furthermore, even if plaintiff's statements were credible they were counter balanced against defendant's investigation, that plaintiff voluntarily gave his property away to satisfy debts he incurred with other inmates. Where the 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 property was lost while under control of defendant's agents.

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

SHANE RENO

Plaintiff

V.

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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