

IN THE COURT OF CLAIMS OF OHIO

RONALD J. WANYERKA, #A333-155 :
15708 St. Rt. 78 W.
Caldwell, Ohio 43724-8902 : Case No. 2002-01152-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPT. REHABILITATION :
AND CORRECTIONS

Defendant :

: : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Ronald J. Wanyerka, an inmate at defendant's Noble Correctional Institution, alleges on January 21, 2001, his locker box was broken into and several items of personal property were stolen.

{¶2} 2) Defendant conducted a prompt, but fruitless, search after being informed of the theft.

{¶3} 3) Plaintiff has filed this complaint seeking to recover \$104.25, the estimated value of his personal property, which he asserts was stolen as a direct result of defendant's negligence in failing to provide adequate protection. Plaintiff also seeks recovery of the \$25.00 filing fee.

{¶4} 4) On May 7, 2002, defendant filed an investigation

report. Defendant denied liability for the loss of plaintiff's personal property.

{¶5} 5) On May 29, 2002, plaintiff filed a response to defendant's investigation report. Plaintiff asserts defendant should be responsible for the loss of his property.

CONCLUSIONS OF LAW

{¶6} 1) The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary care or reasonable care. *Williams*, supra.

{¶7} "2) Defendant is not responsible for actions of other inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶8} 3) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶9} 4) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the 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} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. Consequently, plaintiff's case is denied.

{¶11} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶12} IT IS ORDERED THAT:

{¶13} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶14} 2) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

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