

IN THE COURT OF CLAIMS OF OHIO

KENNETH V. STILL, #215-635 :
P.O. Box 57 :
Marion, Ohio 43301 : Case No. 2001-10956-AD

Plaintiff : MEMORANDUM DECISION

v. :

MARION CORRECTION INST. :

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, Kenneth V. Still, an inmate incarcerated at defendant, Marion Correctional Institution, has alleged that on or about February 16, 2000, defendant's employee confiscated his personal property. Plaintiff further alleged defendant subsequently destroyed the confiscated property.

{¶2} 2) Plaintiff described the alleged destroyed property items as, "[m]y father's will, power of attorney, his new wife, 31 civil witness statements, informal statement, religious civil case laws, for-profit and not-for profit corporation applications fully filled out, DNA testing results, relapse guide, and 9 paralegal books."

{¶3} 3) Plaintiff filed this complaint seeking to recover

\$1,225.00, the estimated value of the alleged destroyed papers, plus filing fee.

{¶4} 4) Defendant filed an investigation report denying any liability in this matter. Defendant denied confiscating or exercising control over plaintiff's property on or about February 16, 2000. Defendant asserted plaintiff has failed to prove ownership of the legal materials and books he claimed were destroyed.

{¶5} 5) On June 17, 2002, plaintiff filed a motion for extension of time to file a response to defendant's investigation report.

{¶6} 6) On August 16, 2002, plaintiff filed a response to defendant's investigation report. Plaintiff did not provide any independent proof that he owned the property in question. Plaintiff only provided his self serving affidavit. Plaintiff's proof is insufficient.

CONCLUSIONS OF LAW

{¶7} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, 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.

{¶8} 2) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶9} 3) 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* (1977), 76-0368-AD.

{¶10} 4) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm.

Parks v. Department of Rehabilitation and Correction (1985), 85-01546-AD.

{¶11} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶13} IT IS ORDERED THAT:

{¶14} 1) Plaintiff's motion for extension of time is MOOT;

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

{¶16} 3) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
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