

IN THE COURT OF CLAIMS OF OHIO

CHARLES H. HUNTLEY, #411-993 :
P.O. Box 59
Nelsonville, Ohio 45764 : Case No. 2002-04518-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPT. OF REHABILITATION :
AND CORRECTION

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, Charles H. Huntley, an inmate incarcerated at defendant's Hocking Correctional Facility, has alleged that on or about February 20, 2002, his eyeglasses were stolen from his living area while he was asleep. Plaintiff did not secure his eyeglasses in his locker box.

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

{¶3} 3) Plaintiff filed this complaint seeking to recover \$245.00, the estimated value of his eyeglasses, which he asserts were stolen as a direct result of defendant's negligence in failing to provide adequate security. Plaintiff also seeks recovery of the filing fee.

{¶4} 4) On July 23, 2002, defendant filed an investigation report denying liability for the theft of plaintiff's eyeglasses.

{¶5} 5) On August 23, 2002, plaintiff submitted an untimely response to the defendant's investigation report. Plaintiff asserts the eyeglasses in question were his and he reported the theft to defendant's agent.

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-AD. Plaintiff must show defendant breached a duty of ordinary 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 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. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶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 in this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
9/26
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