

IN THE COURT OF CLAIMS OF OHIO

ANDRE D. MORRIS III, #291-775 :
P.O. Box 120
Lebanon, Ohio 45036 : Case No. 2002-05581-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPARTMENT 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, Andre D. Morris III, an inmate incarcerated at institutions under the control of defendant, Department of Rehabilitation and Correction, filed this complaint alleging his personal property was damaged, stolen or lost on several separate occasions from November 15, 2000 through December 10, 2001. Plaintiff has alleged his personal property was lost, stolen or damaged as a proximate result of negligence on the part of defendant's personnel. Plaintiff seeks to recover \$2,500.00, the statutory maximum damage claim under R.C. 2743.10 for his alleged property loss. Plaintiff has filed twenty separate claims in this court since 1997.

{¶2} 2) Initially, plaintiff indicated he was incarcerated at defendant's Mansfield Correctional Institution on November 15,

2000 when his personal property was packed by defendant's staff and stored in a storage room. Plaintiff related a nearby toilet overflowed and caused water damage to his property stored in the storage room.

{¶3} 3) Plaintiff stated he was taken to the "hole" on December 12, 2000 and the clothing he was wearing was taken by defendant's employees and never returned.

{¶4} 4) Additionally, plaintiff asserted his property was taken by defendant's personnel on January 11, January 12, and January 21, 2001. Plaintiff contended the property items taken were subsequently lost while under defendant's control.

{¶5} 5) Plaintiff explained that while he was incarcerated at defendant's Warren Correctional Institution he was sent to the "hole" at two separate times, August 29, 2001 and again on December 10, 2001. Plaintiff asserted on both occasions when he went to the "hole" several items of his personal property were not packed by defendant's employees. The unpacked articles were presumed lost.

{¶6} 6) Although defendant did not offer any reasonable explanation concerning what happened to plaintiff's property on or about November 15, 2000, defendant has admitted liability for property loss which may or may not have occurred in the amount of \$50.45. Defendant could not find any evidence of a flood or water overflow at the Mansfield Correctional Institution on November 15, 2000.

{¶7} 7) Defendant acknowledged plaintiff was transferred to a segregation unit on December 10, 2000. However, defendant asserted all of plaintiff's property items were returned to his possession upon his release from segregation.

{¶8} 8) Both defendant and plaintiff produced evidence showing articles were confiscated from plaintiff's possession on January 11, January 12, and January 21, 2001. On January 11, 2001, defendant confiscated a pornographic magazine, a doo rag and a pen from plaintiff. On January 12, 2001, a plastic jump rope, skull cap, three spools of thread and needles from defendant's Tailoring

Department, two state owned pants, and a state owned shirt were confiscated from plaintiff. On January 21, 2001, cloth material from defendant's Tailoring Department was confiscated from plaintiff. Defendant denied liability for any of the confiscated articles based on the fact plaintiff could not provide any proof of ownership of the confiscated property.

{¶9} 9) Defendant denied losing any of plaintiff's property incident to the August 29, 2001 pack-up when plaintiff was transferred to a segregation unit at Warren Correctional Institution. Defendant asserted all of plaintiff's property was packed and subsequently returned.

{¶10} 10) Additionally, defendant acknowledged plaintiff's property was packed on December 10, 2001. However, defendant denied any of plaintiff's property was lost while under its control. Defendant has contended plaintiff did not offer sufficient evidence to prove any of his property was lost or stolen as a result of any act or omission on the part of Warren Correctional Institution staff.

{¶11} 11) Plaintiff filed a response. The trier of fact does not find plaintiff's assertions concerning property loss to be particularly persuasive.

CONCLUSIONS OF LAW

{¶12} 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.

{¶13} 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.

{¶14} 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.

{¶15} 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.

{¶16} 5) 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 issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶17} 6) Plaintiff's failure to prove delivery of certain articles to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶18} 7) Plaintiff has no right to assert a claim for property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

{¶19} 8) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property was lost, stolen or destroyed as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶20} 9) Based solely on the fact of defendant's admission, defendant is liable to plaintiff in the amount of \$50.45, plus the \$25.00 filing fee which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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

{¶22} IT IS ORDERED THAT:

{¶23} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶24} 2) Defendant (Department of Rehabilitation and Correction) pay plaintiff (Andre D. Morris III) \$75.45 and such interest as is allowed by law;

{¶25} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
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