[Cite as *Nur v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2436.]

IN THE COURT OF CLAIMS OF OHIO

YAQUB A. NUR :

Plaintiff :

v. : CASE NO. 2002-10135-AD

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION : MEMORANDUM DECISION

:

Defendant

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

FINDINGS OF FACT

{¶1} 1) On March 6, 2002, employees of defendant's Grafton Correctional Institution (GCI) conducted a shakedown search of the area where plaintiff, Yaqub A. Nur was housed.

{¶2} 2) Plaintiff has alleged that his personal property was commingled with the personal property of his cellmate during the shakedown search. Plaintiff indicated his cellmate, Henry McCluney was immediately transferred to a disciplinary confinement unit. Due to the commingling of property during the shakedown, plaintiff contended his long underwear, prayer caps, turban, and baseball cap were packed with inmate, McCluney's property and transferred with him to the disciplinary confinement unit. Plaintiff has suggested his property items which had been mistaken for McCluney's property were subsequently lost while under defendant's control.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover $42.00, the estimated value of his alleged missing prayer caps, long underwear, turban, and baseball cap. Plaintiff has also claimed damages of $3.50 for postage fees "to mail out items confiscated on March 6, 2002." Plaintiff submitted the filing fee on November 25, 2002.

{¶4} 4) In a totally unrelated matter, plaintiff has alleged on May 16, 2002, defendant's employee, Major Duffy instituted a written policy ordering inmates to store state issue clothing in their locker boxes, thereby displacing personal property and forcing inmates to make some disposition of their displaced property. Plaintiff has asserted his sweatshirt, "cotton blend", and coffee mug were displaced. Since he had no room to store these items in his locker box, plaintiff asserted he was forced to either mail out or destroy his sweatshirt, "cotton blend", and coffee mug. Plaintiff seeks damages in the amount of $24.25 for these alleged displaced property items.

{¶5} 5) Defendant denied any liability in these matters. Defendant acknowledged a shakedown was conducted on March 6, 2002, by GCI personnel. Two prayer caps and a baseball cap were confiscated from plaintiff's possession incident to the March 6, 2002 shakedown. These items were mailed from GCI to an address designated by plaintiff. Defendant has no record of confiscating or exercising control over long underwear and a turban belonging to plaintiff. Defendant explained a shakedown search was again conducted at GCI on May 16, 2002. Defendant has no record of any property being confiscated from plaintiff's possession in connection with this May 16, 2002 shakedown. Defendant asserted plaintiff has failed to prove he suffered any property loss as a result of any negligent act or omission on the part of defendant's staff.

{¶6} 6) Plaintiff filed a response. Plaintiff implied all property claimed was confiscated and lost while under defendant's control.

CONCLUSIONS OF LAW

{¶7} 1) It has been determined by this court that when a defendant engages in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶8} 2) 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.

{¶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 he suffered any damage to property as a result of defendant's conduct during any shakedown operation. *Zanders v. Department of Rehabilitation and Correction* (1997), 96-11921-AD.

{¶12} 6) Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1990), 89-12968-AD. Defendant cannot be liable for the loss of any property which was delivered to a mail carrier.

{¶13} 7) The state cannot be sued for the exercise of any executive planning function involving the making of a policy decision characterized by a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.

{¶14} 8) 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.

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

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

{¶17} IT IS ORDERED THAT:

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

{¶19} 2) The court shall absorb the court costs of this case in excess of the

filing fee.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Yaqub A. Nur #207-588
2500 South Avon
and Belden Road
Grafton, Ohio 44044

Plaintiff, Pro se

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

For Defendant

RDK/tad
4/11
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