

[Cite as *Tilley v. Ohio State Penitentiary*, 2003-Ohio-2612.]

IN THE COURT OF CLAIMS OF OHIO

EDWARD TILLEY :
Plaintiff :
v. : CASE NO. 2002-09722-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDING OF FACT

{¶1} 1) Plaintiff, Edward Tilley, an inmate incarcerated at defendant, Ohio State Penitentiary, asserted that he delivered his television set into the custody of defendant's personnel on July 12, 2002. Plaintiff stated the television set was placed in storage until August 1, 2002, when the electronic device was mistakenly given to another inmate. The television set was subsequently recovered and returned to plaintiff. However, plaintiff maintained the set was returned to him in a damaged state. Specifically, plaintiff claimed the glass screen on the set was chipped and scratched, plus scratches were discovered on the plastic casing. Furthermore, plaintiff related the channel button on the set was completely broken. Also, plaintiff explained the television set did not function properly.

{¶2} 2) Consequently, plaintiff filed this complaint seeking to recover \$215.00 for property loss, plus \$25.00 for filing fee reimbursement. Plaintiff stated he paid \$215.00 for the television set, but has acknowledged the replacement value of the appliance amounts to \$170.00.

{¶3} 3) Defendant denied any liability in this matter. Defendant asserted its personnel examined plaintiff's television set and did not discover any scratches on the

picture tube. Additionally, defendant asserted the television set “is functioning appropriately.” Defendant contended plaintiff has failed to prove any damage to his television was proximately caused by negligence on the part of institution staff. Defendant’s inspector examined plaintiff’s television set and noted:

{¶4} “Pictures were taken of the t.v., it was also examined for scratches and missing pieces. I did not see a 1 ½ inch scratch down the middle of the screen. Upon close examination several surface marks were noticed on the screen. The t.v. was turned on to see if the marks would be noticeable during viewing, they were not, also the t.v. did not blink while I was looking at it. With the exception of one missing screw the channel button was intact.”

{¶5} 4) Plaintiff filed a response insisting his television set was damaged as a proximate cause of negligence on the part of defendant’s personnel in mistakenly releasing the set to a fellow inmate who had previously fought with plaintiff. Plaintiff contended his television was not damaged when it was delivered to defendant’s staff, but was returned in a damaged state after it had been in the hands of a fellow inmate who bore animosity towards plaintiff. Plaintiff reasserted his television set was damaged in the degree described in his complaint. Plaintiff stated his television set, “is broken in several ways. (1) A 1 ½ inch scratch down the middle of the screen (2) A chip in the glass (3) Scratches and scars on the face of the case and (4) The channel button was completely broken out. The t.v. also began to blink occasionally.”

{¶6} Previously plaintiff filed a motion for extension of time to respond to the investigation report.

CONCLUSIONS OF LAW

{¶7} 1) This court in *Mullett v. Department of Corrections* (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. Souther 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 bring about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶11} 5) As a general matter, in order to recover on a negligence claim, a plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strothers v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶12} 6) Plaintiff has failed to prove a causal connection between the damage to his television set and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Institution* (1998), 97-11819-AD.

{¶13} 7) 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;

{¶14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, his television set was destroyed as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD. Plaintiff has failed to prove by a preponderance of the evidence any breach of care owed by defendant proximately caused his property damage.

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

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's March 24, 2003 motion for extension of time is moot;

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

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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