

extension wires, one bag of coffee, sixteen envelopes, a beard trimmer, a radio, a can of tobacco, two sticks of deodorant, two tubes of toothpaste, two toothbrushes, three bags of drinking mix, two boxes of cakes, one ashtray, two bottles of lotion, three bars of soap, fifteen cassette tapes, a tapehead cleaner cassette, three adaptors, five packs of cigarettes, and two locks. Plaintiff suggested all these property items, with the exception of the locks which were broken, were stolen from his locked locker boxes at sometime before his property was packed on June 3, 2002.

{¶4} 4) In another matter, plaintiff claimed his television set was destroyed, “as a result of the plaintiff filing a theft report regarding his stolen property.” Apparently, while plaintiff was filing a theft report, an unidentified individual poured a liquid substance into the workings of his television set effectively destroying the device.

{¶5} 5) Plaintiff filed this complaint seeking to recover \$779.03, the estimated value of his alleged lost, stolen, or destroyed personal property. Plaintiff also seeks recovery of the \$25.00 filing fee. Plaintiff has alleged he suffered the damages claimed as a proximate cause of negligence on the part of defendant’s staff in failing to protect his property.

{¶6} 6) Evidence has shown plaintiff was escorted to the institution infirmary on June 3, 2002 at approximately 7:00 p.m. Plaintiff’s property items were secured in a locked locker box stored in his dormitory living area. Defendant’s staff retrieved plaintiff’s property and initiated a pack-up at approximately 7:38 p.m. Defendant claimed institution personnel responsible for packing property first learned plaintiff had been transferred to the infirmary at approximately 7:15 p.m., on June 2, 2003.

{¶7} 7) Defendant contended plaintiff failed to produce any evidence to prove RiCI staff were responsible for any property loss or damage he may have suffered.

{¶8} 8) On July 16, 2003, plaintiff filed a response to defendant’s investigation report. Plaintiff submitted a statement from a fellow inmate, Ray Smith, who asserted he witnessed the June 3, 2002 locker box theft of plaintiff’s property. Smith related that shortly after plaintiff was escorted to the institution infirmary he observed several unidentified inmates breaking the locks on plaintiff’s locker boxes and removing property

stored in the boxes. Smith further related he witnessed defendant's employee C/O McRay arrive at plaintiff's dormitory living area at approximately 7:30 p.m. on June 2, 2002. Smith stated he heard C/O McRay order an inmate identified as Prieto to pack plaintiff's property. Smith maintained he saw inmate Prieto gather the remainder of plaintiff's property and transport these items to the dormitory C/O station.

CONCLUSIONS OF LAW

{¶9} 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. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶10} 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.

{¶11} 3) The fact defendant supplied plaintiff with a locker box and access to a 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.

{¶12} 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.

{¶13} 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.

{¶14} 6) Plaintiff has failed to show any causal connection between the damage to his television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), 2003-04236-AD.

{¶15} Having considered all the evidence in the claim file and, for the reasons set

forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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