

[Cite as *Drogell v. Richland Correctional Inst.*, 2003-Ohio-5293.]

IN THE COURT OF CLAIMS OF OHIO

JEFFREY R. DROGELL	:	
Plaintiff	:	
v.	:	CASE NO. 2003-04988-AD
RICHLAND CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On December 12, 2002, plaintiff, Jeffrey R. Drogell, an inmate incarcerated at defendant, Richland Correctional Institution (RiCI), was sent from the institution for a medical visit.

{¶2} 2) Plaintiff related that when he returned to RiCI from his medical visit later in the day of December 12, 2002, he discovered his locker box had been broken into and several items of his personal property had been stolen.

{¶3} 3) Plaintiff reported the theft to RiCI staff. A search was conducted, but none of plaintiff's property was recovered.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$221.21, the estimated value of the property loss on December 12, 2003.

{¶5} 5) In an unrelated matter, plaintiff explained a money order intended for him was lost while under the control of RiCI personnel. Plaintiff seeks recovery of the value of the money order \$25.00, plus an additional \$25.00 for filing fee reimbursement.

{¶6} 6) Defendant admitted liability for the loss of the money order and filing fees. Defendant denied plaintiff's property was stolen as result of any negligent conduct

attributable to RiCI staff.

{¶7} 7) On August 29, 2003, plaintiff filed a motion for default judgment contending defendant has not provided information concerning his claim.

CONCLUSIONS OF LAW

{¶8} 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.

{¶9} 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.

{¶10} 3) The fact defendant supplied plaintiff with a locker box and lock to secure valuable constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶11} 4) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the 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.

{¶12} 5) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

{¶13} 6) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's money order. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶14} 7) Plaintiff has suffered damages in the amount of \$25.00, 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.

{¶15} Plaintiff's motion for default judgment is DENIED. 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 plaintiff in the amount of \$50.00, which includes the filing fee. Court costs are assessed against defendant. 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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RDK/DRB/laa
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