

[Cite as *Beck v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-5553.]

IN THE COURT OF CLAIMS OF OHIO

BRIAN BECK	:	
Plaintiff	:	
v.	:	CASE NO. 2003-05925-AD
DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On April 1, 2003, plaintiff, Brian Beck, an inmate incarcerated at defendant's Belmont Correctional Institution (BCI), suffered property loss when his locked locker box was broken into and several items stored inside were stolen. Plaintiff stated the property items that were stolen consisted of tobacco products and food stuffs.

{¶2} 2) Plaintiff reported the theft to BCI staff immediately after discovering his property had been stolen. Plaintiff indicated a theft report was filed on April 2, 2003, but no search for his property was conducted. Plaintiff claimed no effort was made by BCI personnel to locate his belongings.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$40.75, the estimated replacement value of his tobacco and food products.

{¶4} 4) Defendant denied any liability in this matter. Defendant asserted a BCI employee, Sergeant Ball, "immediately searched the area, questioned known thieves, interviewed witnesses and reviewed camera footage," after being informed about the incident forming the basis of this claim. The thieves could not be identified from review of video tape. Defendant denied breaching any duty owed to plaintiff which resulted in any

property loss.

{¶5} 5) On August 8, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff insisted no search was conducted by BCI staff after receiving notice of the theft. Plaintiff disputed defendant's claim that a search was conducted by Sergeant Ball.

CONCLUSIONS OF LAW

{¶6} 1) The mere fact that 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.

{¶7} 2) Defendant is not responsible for the 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.

{¶8} 3) The fact defendant supplied plaintiff with a locker box and 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-AD.

{¶9} 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.

{¶10} 5) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD. In the instant claim, the parties disagree on the issue of whether or not a search took place after plaintiff notified defendant of the theft. Plaintiff is charged with the burden of proof on this issue. Plaintiff has failed to show defendant did not search for his property.

{¶11} 6) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, the court held that

defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. In the instant case, the bulk of the stolen property was indistinguishable with the exception of a few food products. Therefore, no duty to search arose.

{¶12} 7) 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.

{¶13} 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:

Brian Beck, #441-252
P.O. Box 540
St. Clairsville, Ohio 43950

Plaintiff, Pro se

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

For Defendant

RDK/laa
9/16
Filed 10/2/03
Sent to S.C. reporter 10/21/03