

[Cite as *McCoy v. London Correctional Inst.*, 2003-Ohio-6023.]

IN THE COURT OF CLAIMS OF OHIO

GARY L. MCCOY	:	
Plaintiff	:	
v.	:	CASE NO. 2003-06255-AD
LONDON CORRECTIONAL	:	<u>MEMORANDUM</u>
INSTITUTION	:	<u>DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) Plaintiff, Gary L. McCoy, an inmate incarcerated at defendant, London Correctional Institution, has asserted his alarm clock was stolen on December 2, 2002. Additionally, plaintiff asserted his blanket was stolen on February 6, 2003. Finally, plaintiff related his radio was stolen on February 19, 2003. Plaintiff accused a fellow inmate, identified as Bell #268-359, of committing all three thefts.

{¶2} 2) Defendant’s personnel conducted prompt, but fruitless searches after being informed of the thefts.

{¶3} 3) Plaintiff stated he discovered at sometime during March 2003, his alarm clock was in the possession of an inmate identified as Maynor. However, the clock was not recovered. Plaintiff maintained inmate Maynor was permitted to mail the clock out of the institution despite the fact plaintiff claimed he informed defendant’s personnel Maynor was in possession of his clock.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$87.44, the total replacement cost of the alleged stolen property items. Plaintiff also seeks recovery of the

\$25.00 filing fee. Furthermore, plaintiff has contended he is entitled to recover treble damages and postage costs related to the prosecution of his claim. Treble damages and postage are not compensable damage elements in this court. The issue will not be further addressed. Plaintiff's damage claim is considered set at \$102.44.

{¶5} 5) Plaintiff argued he suffered the loss of his property as a proximate cause of negligence on the part of defendant's staff in failing to take extra measures to protect and recover the property.

{¶6} 6) Defendant denied liability in this matter. Defendant denied any of its staff members were informed of the thefts. Defendant submitted a report from its employee, Karrie Sebastian, who claimed plaintiff never filed any Theft/Loss Reports concerning the theft of his clock, radio, and blanket. Defendant contended plaintiff has failed to prove any of his property was stolen as a proximate cause of negligence on the part of London Correctional Institution staff.

{¶7} 7) Plaintiff submitted copies of three Theft/Loss Reports which establish, contrary to defendant's pronouncements, that all property thefts claimed were reported. From a reading of the reports it appears defendant's personnel conducted searches after being informed of the thefts.

{¶8} 8) On September 26, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted defendant's personnel acted in a negligent manner after being informed of the thefts. Plaintiff argued defendant's personnel were informed of the identity of the thief and refused to act on this information. Plaintiff asserted he has proven entitlement to all damages claimed.

#### CONCLUSIONS OF LAW

{¶9} 1) 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} 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. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶11} 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.

{¶12} 4) 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*.

{¶13} 5) Defendant is not responsible for thefts committed by 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.

{¶14} 6) 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.

{¶15} 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, 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.

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

{¶17} 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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