

segregation unit. Additionally, defendant explained plaintiff was provided with a locker box where he could store and secure his property. Defendant denied any unreasonable delay occurred regarding the pack-up of plaintiff's property. Furthermore, RiCI personnel conducted security rounds at approximately thirty minute intervals around plaintiff's living area. Defendant denied any negligent act or omission on the part of RiCI employees resulted in the theft of plaintiff's property.

{¶6} 6) On August 29, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff maintained his property was stolen because of an unreasonable delay in conducting the pack-up.

CONCLUSIONS OF LAW

{¶7} 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.

{¶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. Southern 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) 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*.

{¶11} 5) 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.

{¶12} 6) 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.

{¶13} 7) 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.

{¶14} 8) Plaintiff may show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Marion Correctional Institution* (1981), 81-05202-AD.

{¶15} 9) However, in the instant claim, plaintiff has failed to prove defendant's delay in packing his inmate property resulted in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD.

{¶16} 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

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