

[Cite as *Myers v. Noble Correctional Inst.*, 2003-Ohio-6424.]

IN THE COURT OF CLAIMS OF OHIO

MARK A. MYERS :

Plaintiff :

V. :

CASE NO. 2003-06166-AD

NOBLE CORRECTIONAL INSTITUTION :

MEMORANDUM DECISION

Defendant :

.....

FINDINGS OF FACT

{¶1} 1) Plaintiff, Mark A. Myers, an inmate at defendant, Noble Correctional Institution, alleges on December 26, 2002, his locker box was broken into and several items of personal property were stolen.

{¶2} 2) Defendant conducted prompt, but fruitless investigation after being informed of the theft.

{¶3} 3) Plaintiff has filed this complaint seeking to recover \$225.92, the estimated value of his personal property, which he asserts was stolen as a direct result of defendant's negligence in failing to provide adequate protection. Plaintiff also seeks recovery of the \$25.00 filing fee.

CONCLUSIONS OF LAW

{¶4} 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*.

{¶5} 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.

{¶6} 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.

{¶7} 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.

{¶8} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. Consequently, plaintiff's case is denied.

{¶9} 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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Plaintiff, Pro se

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Sent to S.C. reporter 12/2/03