

[Cite as *Stucky v. Noble Correctional Inst.*, 2004-Ohio-2105.]

IN THE COURT OF CLAIMS OF OHIO

BYRON K. STUCKEY :
Plaintiff :
v. : CASE NO. 2003-09602-AD
NOBLE CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
:.....

FINDINGS OF FACT

{¶1} 1) Plaintiff, Byron K. Stuckey, an inmate incarcerated at defendant, Noble Correctional Institution ("NCI"), has alleged that on June 29, 2003, his AIWA brand radio/cassette player was stolen from his living area. The radio/cassette player had been left unsecured, stored under the pillow on plaintiff's bunk.

{¶2} 2) NCI personnel conducted a prompt, but fruitless search after being informed of the theft.

{¶3} 3) Plaintiff has contended defendant is responsible for the theft of his property. Consequently, plaintiff filed this complaint seeking to recover \$48, the replacement cost of his radio/cassette player, plus \$25 for filing fee reimbursement.

{¶4} 4) Defendant denied any liability in this matter. Defendant argued plaintiff has failed to present sufficient evidence to prove NCI personnel proximately caused the property loss claimed.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 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. Dept. of Rehab. & Corr.* (1987), 86-02635-AD.

{¶8} 4) This court in *Mullett v. Dept. of Corr.* (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.

{¶9} 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.

{¶10} 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:

Byron K. Stuckey, #445-384
15708 SR 78 W.
Caldwell, Ohio 43724

Plaintiff, Pro se

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

For Defendant

RDK/laa
3/23
Filed 4/2/04
Sent to S.C. reporter 4/26/04