

[Cite as *Mitchell v. London Correctional Inst.*, 2004-Ohio-3270.]

IN THE COURT OF CLAIMS OF OHIO

BEN MITCHELL, JR. :

Plaintiff :

v. : CASE NO. 2004-01770-AD

LONDON CORRECTIONAL : MEMORANDUM DECISION

INSTITUTION :

Defendant :

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FINDINGS OF FACT

~~{¶1}~~ 1) Plaintiff, Ben Mitchell, Jr., an inmate at defendant, London Correctional Institution, alleges that on August 12, 2003, his locker box was broken into and his radio/cassette player and headphones were stolen.

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

{¶3} 3) Plaintiff has filed this complaint seeking to recover \$72.95, 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 was not required to pay the filing fee.

~~{¶4}~~ 4) On March 29, 2004, defendant filed an investigation report denying liability in this matter.

{15} 5) On April 9, 2004, plaintiff submitted a response to defendant's investigation report. Plaintiff asserts defendant's agents did not conduct a proper search for his property.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶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 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.

{¶10} 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. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD

{¶11} 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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