

[Cite as *Tomblin v. London Correctional Inst.*, 2005-Ohio-4859.]

IN THE COURT OF CLAIMS OF OHIO

JEFFERY L. TOMBLIN	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03431-AD
LONDON CORRECTIONAL INST.	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Jeffrey L. Tomblin, an inmate incarcerated at defendant, London Correctional Institution (LoCI), alleged that on or about April 7, 2004, at approximately 11:30 p.m., his television set was damaged when some unidentified individual poured water into the back of the set destroying the internal workings. Further, plaintiff alleged his locker was broken into and his shoes and radio were stolen around the same time his television was damaged.

{¶ 2} 2) Plaintiff contended his property items were damaged and stolen as a proximate cause of negligence on the part of LoCI personnel in failing to provide adequate protection. Plaintiff consequently filed this complaint seeking to recover \$443.98, the estimated replacement cost of his claimed damaged and stolen property.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant argued plaintiff did not offer any evidence to prove his property was damaged or stolen as a result of any negligence on the part of LoCI staff.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 2) Defendant is not responsible for acts 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.

{¶ 6} 3) 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.

{¶ 7} 4) 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.

{¶ 8} 5) 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 9} 6) The fact defendant supplied plaintiff with a locker 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.

{¶ 10} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 11} 8) Plaintiff has failed to show any causal connection between any damage to his television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Department of Rehabilitation and Correction*, 2003-04236-AD, 2003-Ohio-3615.

IN THE COURT OF CLAIMS OF OHIO

JEFFERY L. TOMBLIN	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03431-AD
LONDON CORRECTIONAL INST.	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : : :

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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