

[Cite as *Brown v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-4865.]

IN THE COURT OF CLAIMS OF OHIO

INGRAM BROWN	:	
Plaintiff	:	
v.	:	CASE NO. 2004-11015-AD
OHIO DEPT. OF REHAB. AND CORR.	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Ingram Brown, an inmate incarcerated at defendant's Mansfield Correctional Institution (ManCI), has alleged that on three separate occasions, January 6, 2004, June 21, 2004, and August 31, 2004, unidentified individuals entered his unlocked cell and stole multiple items of personal property stored in a locked locker box. Plaintiff contended access to his cell was made available when ManCI employees unlocked cell doors during times when plaintiff was absent from his cells. Plaintiff had three different cell assignments at the various dates of the three alleged theft occurrences.

{¶ 2} 2) Plaintiff argued his property was stolen as a proximate cause of negligence on the part of ManCI staff in permitting thieves access to the contents in plaintiff's cells. Consequently, plaintiff filed this complaint seeking to recover \$354.93 for property loss, plus \$25.00 for filing fees. Plaintiff also claimed \$25.00 for postage, copying, and litigation costs. These expenses are not compensable in a claim of this type. Plaintiff's claims for postage, copying, and litigation costs are denied and shall not be further addressed. Plaintiff's total damage claim amounts to \$379.93. The filing fee was paid.

{¶ 3} 3) Thefts reports were filed regarding the June 21, 2004 and August 31, 2004, alleged incidents. In each case, a prompt, but fruitless search was conducted for reported stolen property although plaintiff claimed he reported a theft to ManCI personnel on January 6, 2004, no report was generated in regard to this alleged occurrence.

{¶ 4} 4) Defendant contended plaintiff did not offer sufficient evidence to prove ManCI staff left his cell door unlocked on three separate occasions facilitating thefts. Defendant further contended plaintiff failed to prove his property was stolen and if thefts did occur the property loss was attributable to any negligent act or omission on the part of ManCI staff.

{¶ 5} 5) Plaintiff insisted his property was stolen as a proximate cause of defendant's negligence in unlocking his cell doors. Plaintiff asserted he did report a theft on January 6, 2004, and filled out a theft report. Plaintiff related defendant's employees did not conduct a search after he reported a theft on January 6, 2004. Plaintiff submitted a written statement from a former cell mate, Samuel Tucker, who noted he locked his cell door on January 6, 2004, to go to work. Tucker stated when he returned from work plaintiff informed him of a theft of property from their cell. Tucker recalled none of his property was stolen on January 6, 2004.¹

CONCLUSIONS OF LAW

{¶ 6} 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.

¹ Plaintiff filed a response.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) The allegation that a theft may have 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.

{¶ 10} 5) 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.

{¶ 11} 6) Defendant is not responsible for thefts 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.

{¶ 12} 7) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particularly persuasive.

{¶ 13} 8) 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.

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

{¶ 15} 10) Defendant, when it retains control over whether an inmate's cell door is to be open or closed, owes a duty of reasonable care to inmates who are exclusively forced to store their possessions in the cell while they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD.

{¶ 16} 11) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to lock his cell door, and therefore, no liability shall attach to defendant as a result of any theft. *Carrithers v. Southern Ohio Correctional Facility* (2002), 2001-09079-AD.

{¶ 17} 12) 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.

INGRAM BROWN	:	
Plaintiff	:	
v.	:	CASE NO. 2004-11015-AD
OHIO DEPT. OF REHAB. AND CORR.	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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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RDK/laa
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