

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ROY WALLACE

Plaintiff

v.

CORR. RECEPTION CENTER

Defendant

Case No. 2006-06230-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On April 1, 2005, plaintiff, Roy Wallace, an inmate, was transferred from the Hamilton County Jail to defendant, Correction Reception Center (“CRC”). Plaintiff’s personal property was also transferred from Hamilton County to CRC on that same day. Plaintiff related that when he was received into custody at defendant’s facility, his personal property was inspected and multiple items were declared impermissible by CRC staff. According to plaintiff, the declared unacceptable property items were confiscated by CRC personnel. Plaintiff stated he was then ordered by defendant’s employee, C/O Zonner, to authorize the mailing of the confiscated items to a designated address.

{¶2} 2) Plaintiff asserted defendant’s employees deliberately deprived him of his personal property which included legal materials, books, clothing items, towels, wash cloths, and dental adhesive. Plaintiff submitted a copy of his property inventory compiled on April 1, 2005. This inventory lists clothing, hygiene items, letters and papers were designated to be mailed. Other property items relevant to this claim, such as legal material, a Bible, and shower shoes, are listed on the April 1, 2005, inventory, but are not designated for mailing. Plaintiff contended he should be allowed to be reimbursed for property deprivation. Plaintiff filed this complaint seeking to recover \$513.53, the estimated value of certain property items that were in his possession on April 1, 2005. Plaintiff also seeks reimbursement of the \$25.00 filing fee included in his damage claim. The filing fee was paid. Plaintiff essentially complained he was improperly deprived of his property when he was received at CRC.

{¶3} 3) Defendant acknowledged plaintiff’s clothing (including shoes), hygiene items, letters, and papers were mailed to a designated address from CRC. Defendant denied any law books were in plaintiff’s possession or mailed from CRC. Defendant did offer “[p]laintiff had a large quantity of property mailed home given the unusually expensive shipping charge” (\$14.02 mailing charges). Defendant explained plaintiff was permitted to retain writing materials, legal documents and papers, shower shoes, Bible, and reading glasses when he was processed at CRC. Defendant denied any of plaintiff’s property was lost or stolen while in the custody of CRC staff. Defendant denied plaintiff was improperly deprived of property possession by CRC personnel. Defendant insisted plaintiff’s property was mailed from CRC.

{¶4} 4) Plaintiff filed a response, stating, “[t]here was no reason to mail home,” any of his property. Plaintiff contended his property was not mailed from CRC. Plaintiff

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asserted no evidence was produced to show he filled out a mailing address form at the time he authorized the mailing of his property from CRC. Defendant submitted a personal account withdrawal slip (dated April 1, 2005), bearing plaintiff's signature. This withdrawal slip references plaintiff's authorization to have \$14.02 withdrawn from his personal account to pay for mailing expenses to have something mailed via United Parcel Services ("UPS"). The withdrawal slip was apparently generated at CRC. However, the slip does not bear a mailing address, but does contain a UPS tracking number, a weight for materials mailed, plaintiff's inmate number, listed shipping charges of \$14.02, plaintiff's signature, and approval initials made presumed by CRC personnel. Plaintiff argued this withdrawal slip is insufficient evidence to prove his property was mailed from CRC due to the absence of a mailing address. Defendant's inspector, Bryan W. Wellingford, addressed this issue noting, "[d]ue to the amount of time passed this Department was only afforded the tracking number by UPS *** showing that the items were shipped from this facility as well as a cashier document showing that the shipment was for the amount of \$14.02." Despite plaintiff's assertions that his property was not shipped, the trier of fact finds sufficient evidence has been offered to establish plaintiff's property was mailed from CRC on April 1, 2005, through UPS. Plaintiff did not provide his home mailing address. Plaintiff did not provide any evidence to show his property was not received at his home mailing address.

CONCLUSIONS OF LAW

{¶15} 1) The state cannot be sued for the exercise of any executive planning function involving the implementation of a policy decision characterized by a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68. Any decision made by defendant in ordering plaintiff to mail out his property is not actionable in this court.

{¶16} 2) 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.

{¶17} 3) Although not strictly responsible for a prisoner's property, defendant had

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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} 4) 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} 5) 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.

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

{¶11} 7) Defendant is not responsible for property once it is shipped out of the facility. At that point, the property is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1989), 89-12968-AD; *Reynolds v. Lebanon Correctional Institution* (2001), 2001-03798-AD, jud; *Frazier v. Mansfield Correctional Inst.* (2006), 2005-09375-AD, jud.

{¶12} 8) 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. Antill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particularly persuasive.

{¶13} 9) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property items were lost, discarded or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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
4/5
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