

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

JASON ELLIS

Plaintiff

v.

Case No. 2007-02254-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

FINDINGS OF FACT

{¶1} 1) On June 16, 2006, plaintiff, Jason Ellis, an inmate incarcerated at the Lake Erie Correctional Institution ("LaECI"), was transferred to defendant's Southern Ohio Correction Facility ("SOCF"). Plaintiff's personal property was transferred with him from LaECI to SOCF. From March 15, 2006, to the date of his transfer, plaintiff was assigned to a segregation unit at LaECI and he was segregated from his personal property. Plaintiff pointed out he packed his own property incident to the March 15, 2006, transfer to the LaECI segregation unit. The packed property was presumed stored in the property vault at LaECI until the items were transferred with plaintiff to SOCF on June 16, 2006. A written inventory of plaintiff's property was compiled on March 15, 2006.

{¶2} 2) Plaintiff related that when he arrived at SOCF on June 16, 2006, he was assigned to a segregation unit and access to his personal property was therefore, restricted. Plaintiff further related he received some property items on June 19, 2006, and assumed the remainder of his property that had been transferred from LaECI was placed into storage in the SOCF property vault. According to plaintiff, when he regained possession of the remainder of his property upon his release from segregation at

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SOCF, he discovered several articles were missing from his returned property. Plaintiff claimed the following items he possessed at LaECI were not returned by SOCF staff: twelve cassette tapes, one calculator, one bowl, one cup, one bag of pretzels, one bag of cheese bits, one bag of chips, two hats, one bag of refried beans, one bag of coffee, two boxes of Nutty bars, and forty-six photographs. Consequently, plaintiff filed this complaint seeking to recover \$209.19, the estimated value of his alleged missing personal property items. Plaintiff contended the listed property was lost or stolen as a proximate cause of negligence on the part of personnel at either LaECI or SOCF. Plaintiff was not required to pay the filing fee.

{¶3} 3) Defendant acknowledged plaintiff was assigned to a segregation unit at LaECI on March 15, 2006, and inventoried and packed his personal property incident to this housing assignment. Defendant explained, LaECI, "is a facility operated by a private contractor, MTC corporation." All items claimed as missing by plaintiff are included on the March 15, 2006, inventory of plaintiff's property. On June 14, 2006, plaintiff and his property were transferred from LaECI to defendant's Lorain Correctional Institution ("LorCI"). Defendant submitted a copy of plaintiff's March 15, 2006, property inventory which bears plaintiff's signature acknowledging all the listed property had been returned to his possession. This inventory also bears the signature of the vault officer at LaECI and the date June 14, 2006. Plaintiff's signature under the receipt acknowledgment is not dated. Plaintiff's property was again inventoried by LaECI staff on June 14, 2006, incident to the transfer to LorCI. Plaintiff signed and dated the June 14, 2006, inventory, certifying it as a complete and accurate listing of his personal property. Defendant submitted a copy of the June 14, 2006, property inventory. Defendant pointed out there are obvious discrepancies between the March 15, 2006, inventory and the June 14, 2006, inventory, both compiled at LaECI with plaintiff present on both occasions when the inventories were completed. Property relevant to this claim listed on the March 15, 2006, inventory includes: twenty-seven cassette tapes, one calculator, one bowl, one cup, one bag of pretzels, one bag of cheese bits, one bag of

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chips, two hats, one bag of refried beans, coffee, two Nutty bars, and one photo album, presumably containing photographs. Property relevant to this claim listed on the June 14, 2006, inventory includes: fifteen cassette tapes, one calculator, one bag of beans, two bags of chips, and one hat. Bowls, cups, pretzels, cakes and pastries, including Nutty bars, coffee, cheese bits, photographs, photo album, and a second hat are not listed on the June 14, 2006, inventory.

{¶4} 4) After plaintiff arrived at LorCI on June 14, 2006, his property was again inventoried and plaintiff was present during the time the inventory was compiled. Defendant submitted a copy of this June 14, 2006, property inventory which plaintiff signed certifying the listed items represented a complete and accurate inventory of his personal property. Items on the LorCI inventory relevant to this claim include one calculator, one bag of refried beans, and two bags of chips. Cassette tapes, hats, bowls, cups, pretzels, cheese bits, coffee, cakes and pastries, including Nutty bars, photographs, and photo albums are not listed on the LorCI inventory of June 14, 2006. After plaintiff and his personal property were transferred from LorCI to SOCF, another inventory of plaintiff's property was made by SOCF personnel on June 19, 2006. Defendant submitted a copy of the June 19, 2006, inventory, which plaintiff signed on June 20, 2006, certifying the listed articles as a complete and accurate inventory of his personal property. Items listed on the June 19, 2006, inventory that are relevant to this claim include fifteen cassette tapes and assorted photographs. No other claimed missing property items were listed.

{¶5} 5) Defendant denied any of plaintiff's property was lost while under the control of either LorCI personnel or SOCF personnel. Defendant admitted plaintiff, while incarcerated at LaECI, possessed twenty-seven cassette tapes and two hats. Defendant explained internal regulations limit the permissible possession amount for cassette tapes to fifteen. Plaintiff, therefore, possessed twelve tapes in excess of the allowable possession limit. Defendant noted the excess tapes would be considered contraband, subject to confiscation and plaintiff would not be allowed to take the excess

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tapes with him when he transferred from institution to institution. Defendant suggested plaintiff may have disposed of the twelve excess tapes at some point between March 15, 2006, and June 14, 2006. Similarly, defendant suggested plaintiff may also have disposed of his two hats at different times during the period he was being transferred from institution to institution. Defendant pointed out the general possession limit is one hat per inmate. However, defendant related hats are not permitted at all at SOCF (subject to certain specific exemptions). Other than a general denial regarding responsibility for property loss, defendant did not offer additional suggestions concerning the disposition of the remaining items claimed in plaintiff's complaint.

{¶6} 6) Plaintiff filed a response maintaining he was separated from his property from March 15, 2006, through June 14, 2006, and did not have access to any items contained on the various property inventories compiled during this time frame. Although plaintiff acknowledged he signed every property inventory compiled between March 15, 2006, and June 19, 2006, plaintiff denied his signature acted as an admission that the inventories represented a complete and accurate listing of all the property he owned. Plaintiff asserted his property was under the control of defendant's employees from March 15, 2006, to June 19, 2006. However, it should be noted defendant's LorCI personnel and defendant's SOCF staff exercised custody and control over plaintiff's property from June 14, 2006, to on or about June 20, 2006. LaECI employees had custody of plaintiff's property from March 15, 2006, to June 14, 2006.

{¶7} 7) Plaintiff contended none of the property he claimed was lost constituted contraband. Plaintiff implied he rightfully owned all property claimed, despite the fact he possessed items in excess of defendant's set limits in accordance with adopted policy. Plaintiff did not establish the property claimed was lost or stolen while under the control of LorCI personnel or SOCF staff.

CONCLUSIONS OF LAW

{¶8} 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

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fault) with respect to inmate property, but that it does have the duty to make “reasonable attempts to protect, or recover” such property. In the instant claim, plaintiff failed to prove his photographs were not recovered and returned to his possession.

{¶9} 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.

{¶10} 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.

{¶11} 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.

{¶12} 5) In order to recover against 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.

{¶13} 6) Plaintiff’s failure to prove delivery of certain property items to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶14} 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. Antill* (1964), 176 Ohio St. 61. The court does not find plaintiff’s assertions particular persuasive in light of the fact that he signed multiple property inventories, certifying the documents contained complete and accurate

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listings of his property.

{¶15} 8) Plaintiff has failed to prove, by a preponderance of the evidence, any property was 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
8/10
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