

[Cite as *Mitchell v. Lebanon Corr. Inst.*, 2007-Ohio-7088.]

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

OSCAR D. MITCHELL, JR.

Plaintiff

v.

LEBANON CORR. INST.

Defendant

Case No. 2007-01428-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Oscar D. Mitchell, Jr., an inmate incarcerated at defendant, Lebanon Correctional Institution (“LeCI”), stated he left his “single-man cell” on June 22, 2006 at approximately 12:00 p.m. to report to his work assignment at the LeCI library. Plaintiff maintained that he locked his cell door upon leaving to go to work. According to plaintiff, when he returned from his work assignment at approximately 3:00 p.m. on June 22, 2006, he discovered his cell door had been unlocked, his fan and power strip were missing from the cell and were presumed stolen.

{¶2} 2) Plaintiff related he immediately report the theft of his fan and power strip to LeCI personnel on duty at the time. Plaintiff contended defendant’s employees opened his cell door after he had left for work at the institution law library, thereby facilitating the theft of his property. Plaintiff asserted all cell doors on his cell block are opened during a time period described as a “mass movement.” Plaintiff argued access to the property in his cell was gained by an unidentified thief when all cell doors were unlocked during the mass movement period. Plaintiff maintained that defendant’s staff could have “deadlocked” his cell door to bypass the total unlocking procedure when the mass movement occurred and he was absent from the cell block. However, plaintiff observed his cell door was not deadlocked on June 22, 2006.

{¶3} 3) Plaintiff asserted his fan and power strip were stolen as a proximate cause of negligence on the part of LeCI staff in opening his cell door during his work related absence. Plaintiff filed this complaint seeking to recover \$31.01 for the replacement cost of his property items. Plaintiff also seeks reimbursement of the filing fee cost, \$25.00. Additionally, plaintiff requested damages of \$20.00 for postage and copying costs. Postage and copying costs are not recognizable elements of damages in a claim of this type. Therefore, the request for these expenses is denied and shall not be further addressed. Plaintiff’s total damage claim is limited to property loss. The filing fee was paid.

{¶4} 3) Defendant denied any liability in this matter. Defendant contended plaintiff failed to produce evidence to prove he actually owned a fan and power strip on June 22, 2006. Defendant neither acknowledged nor denied a theft of property from

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plaintiff's cell occurred on June 22, 2006. Defendant explained cell doors on cell blocks are routinely unlocked during mass movements at meal times. Defendant further explained it is routine policy if an inmate such as plaintiff does not want his cell door unlocked during mass movement times then it is the responsibility of the inmate to place his name on the "deadlock list" or make a verbal request to staff. Defendant maintained plaintiff did not pursue either of these options to assure his cell door remained locked. Furthermore, defendant related plaintiff was supplied with a locker box in which to secure his property. Defendant asserted plaintiff did not avail himself of the use of his locker box. Defendant also asserted LeCI personnel conducted a prompt but fruitless search after plaintiff complained of the property theft. Defendant argued plaintiff failed to establish his property was stolen as a result of any negligent act or omission on the part of LeCI employees.

{¶5} 5) Plaintiff filed a response submitting documentation showing he purchased a fan on August 25, 2003 for \$20.10. This documentation constitutes evidence plaintiff owned a fan on August 25, 2003. Plaintiff stated he obtained a power strip through barter at some time during March, 2002. On July 5, 2006, plaintiff purchased a power strip from the LeCI commissary.

{¶6} 6) Plaintiff insisted he did notify LeCI employee, Corrections Officer Lyons, to deadlock his cell door. Corrections Officer Zielinski, Corrections Officer, J. Risner, Corrections Officer Williams and Corrections Officer Lyons were on duty in plaintiff's cell block on June 22, 2006. Plaintiff stated Williams and Lyons opened his cell door on that date during a mass movement. Plaintiff contended defendant should bear liability for his property loss since his cell door was unlocked by LeCI employee Lyons after he requested the door remain deadlocked.

CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 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. Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶11} 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.

{¶12} 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.

{¶13} 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 regarding the claims he requested his cell door be deadlocked during mass movement.

{¶14} 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

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bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶15} 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.

{¶16} 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.

{¶17} 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; *Brown v. Ohio Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2004-11015-AD, jud; 2004-Ohio-4865.



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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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