

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

KENNETH COLLIER

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2006-05292-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On January 30, 2006, plaintiff, Kenneth Collier, an inmate incarcerated at defendant's Ross Correctional Institution ("RCI"), was transferred from the RCI general population to the institution infirmary. Incident to plaintiff's transfer, his personal property was inventoried, packed, and delivered into defendant's custody.

{¶2} 2) On or about February 2, 2006, plaintiff was transferred from the RCI infirmary to a mental health facility. At the time of this transfer, plaintiff was presented with a property inventory sheet listing his property items that had been packed on January 30, 2006. Plaintiff recalled he examined the inventory and noticed several items of his property had not been packed. Plaintiff maintained he immediately complained to defendant's personnel about the missing property. According to plaintiff, his Super III radio, Sony walkman cassette player/radio, Sony headphones, and one pair of Russell Gym shorts had not been packed. Plaintiff claimed the alleged missing property was stored in his locked cell at the time he was transferred to the RCI infirmary.

{¶3} 3) Plaintiff contended RCI staff were responsible for the loss of his property. Consequently, plaintiff filed this complaint seeking to recover \$173.49, the

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estimated replacement cost of his alleged missing property. Plaintiff was not required to pay a filing fee to pursue this action.

{¶4} 4) Defendant denied any liability in this matter. Defendant acknowledged plaintiff's property was inventoried and packed on January 30, 2006 by RCI staff with the assistance of plaintiff's cellmate and another inmate identified as King. Plaintiff asserted his property was inventoried and packed by inmate King alone. Defendant also acknowledged the January 30, 2006 inventory of plaintiff's property did not list the radio, walkman, or headphones, but did list a pair of gym shorts. Defendant stated, "plaintiff's personal property was packed up and individually inventoried by RCI staff on January 26, 2006 in the presence of plaintiff so it could be checked for another of plaintiff's claim of missing property." Defendant explained earlier January 26, 2006 inventory did not list a radio, walkman, or headphones, but did list two pairs of gym shorts. Defendant denied any property owned by plaintiff was lost or stolen while under the control of RCI personnel. Defendant suggested plaintiff sold the claimed missing property items to cover debts owed to other inmates. Defendant asserted the radio, headphones, and walkman were not in plaintiff's cell when the property was packed on January 30, 2006.

{¶5} 5) Plaintiff filed a response insisting all property claimed was lost or

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stolen while under defendant's control. Plaintiff denied selling the claimed missing property to pay off debts owed to other inmates. Plaintiff argued that defendant lied about the disposition of his property. Plaintiff related his headphones, radio, and walkman were not listed on the January 26, 2006, property inventory, because the items were at the RCI "mail office and vault being properly sealed and retitled." Plaintiff explained the titles he previously possessed, "had come up missing when I had moved to Unit 7A, cell 267" at RCI. In his complaint plaintiff submitted copies of titles for his radio, walkman, and headphones dated February 18, 1999, June 9, 2005, and June 9, 2005 respectively. Plaintiff pointed out the January 30, 2006, inventory bears a written notation "Missing the Following, 1 Sony Walkman, 1 Sony Headphones, 1 Sweat Shorts, 1 Super III GE." This notation was not written by the same person or persons who compiled the January 30, 2006, inventory. Plaintiff signed and dated the January 30, 2006, inventory, "2/12/06." There is no indication when the written notation concerning missing property was recorded on the inventory. Plaintiff claimed he reported the missing property on February 2, 2006. Defendant's "Theft/Loss Report" regarding the investigation surrounding the reported loss is dated February 1, 2006. Plaintiff alleged the claimed property loss investigation was conducted before a loss was ever reported.

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CONCLUSIONS OF LAW

{¶6} 1) 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.

{¶7} 2) 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.

{¶8} 3) 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.

{¶9} 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.

{¶10} 5) Plaintiff's failure to prove delivery of the claimed lost items to defendant constitutes a failure to show imposition of a legal bailment duty on the part of

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defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶11} 6) 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.

{¶12} 7) Defendant is not responsible for actions of other 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} 8) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen or lost was a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-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:

Kenneth Collier, #169-056
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RDK/laa
9/27
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