

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

RAYSHAN WATLEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2007-04079-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On or about July 19, 2006, plaintiff, Rayshan Watley, an inmate incarcerated at defendant's Southern Ohio Correctional Facility ("SOCF"), was transferred from the SOCF general population to a segregation unit. On August 16, 2006, plaintiff was then transferred to a local control unit where he remained until February 13, 2007. Plaintiff related he was moved again to segregation on February 13, 2007, and was then transferred from SOCF to the Ohio State Penitentiary on March 1, 2007.

{¶2} 2) Plaintiff noted when he was first sent to the segregation unit on July 19, 2006, his personal property was packed and delivered into the custody of SOCF staff. Plaintiff recalled his property was stored in the SOCF property vault from July 19, 2006 to March 1, 2007. Plaintiff claimed unspecified property items that were packed by SOCF personnel were lost at sometime between July 19, 2006 and March 1, 2007. Plaintiff filed this complaint seeking to recover an unspecified damage amount for an unspecified loss of property items. Plaintiff was not required to pay a filing fee.

{¶3} 3) Defendant contended plaintiff failed to offer any evidence to prove any of his property was lost while under the control of SOCF staff.

{¶4} 4) Plaintiff filed a response. Plaintiff stated his property was inventoried

and packed on July 20, 2006, incident to his transfer to segregation. Plaintiff asserted the packed property included one cassette player, one set of headphones, letters, papers, four cassette tapes, one chap stick, one powder, one cocoa butter, fourteen packets of tobacco, three pepperoni, one shower shoe, two cheese spreads, one comb, one drink mix, three sandwich spreads, two deodorants, one hair grease, five lotions, one bar of soap, ten batteries, two toothbrushes, two toothpastes, three bags of candy, two peanut butter, and thirteen seafood packs. Plaintiff asserted the property items were never returned.

{¶15} 5) Both plaintiff and defendant submitted copies of plaintiff's property inventory compiled on July 20, 2006. All property claimed by plaintiff with the exception of the toothbrushes is listed on the July 20, 2006, inventory. Defendant also submitted inventories of plaintiff's property compiled on August 3, 2006 and August 16, 2006. Of the property claimed by plaintiff, the August 16, 2007 inventory lists letters, papers, three cassette tapes, one chap stick, one tobacco product, one pepperoni, one pair of shower shoes, two deodorants, three hair grease, two lotion , three bars of soap, four toothpastes, one bag of candy, one peanut butter, and thirteen seafood packs. Other items are listed. However, the trier of fact is unable to determine specifically what items are listed due to the poor quality of the inventory copy submitted.

{¶16} 6) Defendant explained the cassette player and headphones packed on July 20, 2006, were confiscated and declared contraband. Defendant contended plaintiff never proved he ever rightfully owned a cassette player and headphones. Additionally, defendant asserted plaintiff failed to prove he owned the other claimed items since records indicate plaintiff had not purchased any items at the SOCF commissary from June 1, 2006 through August 1, 2006. Defendant noted plaintiff, while housed in the SOCF segregation unit, was permitted "some commissary and hygiene articles."

{¶17} 7) Plaintiff did not offer any evidence to establish he rightfully owned the property claimed. Evidence has shown plaintiff possessed the property on July 19,

2006.

{¶18} 8) On February 26, 2007, plaintiff filed an informal complaint with defendant claiming his property was lost by SOCF staff. Defendant responded by recording the “property room will look into.”

CONCLUSIONS OF LAW

{¶19} 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.

{¶10} 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.

{¶11} 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.

{¶12} 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.

{¶13} 5) Plaintiff has no right to pursue a claim for lost or confiscated property which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. In the instant claim, plaintiff failed to offer sufficient proof he legitimately owned any of the items claimed with the exception of letters and papers.

{¶14} 6) It was held that property in an inmate’s possession which cannot be

validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶15} 7) Plaintiff has failed to prove, by a preponderance of the evidence, any property he owned was lost as a proximate result of any negligence on the part of 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
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