

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

FRANK WATSON

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2007-05229-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Frank Watson, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), stated OSP employee, Corrections Officer, W. Wine, entered his cell on August 4, 2006, and confiscated his tennis shoes. According to plaintiff, the confiscated tennis shoes were subsequently destroyed by Wine. Plaintiff asserted that when he complained about the destruction of his tennis shoes, Wine allegedly responded by verbally abusing him, calling him a racial epithet.

{¶2} 2) Plaintiff filed this complaint initially requested damages in the amount of \$690,000.00 for “destruction of property, pain and suffering, mental distress, physical distress, emotional distress, racial discrimination, humiliation, (and) embarrassment.” The filing fee was waived.

{¶3} 3) On July 19, 2007, this court filed an entry transferring plaintiff’s claim from the Judicial Docket to the Administrative Determination Docket determining damages in the particular action do not exceed \$2,500.00. The court found that plaintiff’s claim stems from the loss of his tennis shoes and pain and suffering damages are not compensable in a claim of this type. Plaintiff did not appeal the entry transferring his claim to the Administrative Determination Docket.

{¶4} 4) Defendant denied plaintiff’s tennis shoes were destroyed by Officer Wine. Defendant explained Officer Wine issued plaintiff a conduct report on July 27,

2006, for possessing contraband tennis shoes, due to the fact the shoes had laces which are impermissible under OSP internal policy. Defendant related, "inmates who share the same security level as (plaintiff) are not permitted shoes with laces for security reasons." Evidence has shown plaintiff flushed the shoe laces down the toilet rather than hand over the shoes for confiscation. Defendant asserted plaintiff retained possession of his tennis shoes. Defendant submitted a copy of the OSP Hearing Officer's Report dated August 4, 2006, addressing the conduct report issued to plaintiff by Officer Wine. The Hearing Officer's Report confirms plaintiff retained possession of his tennis shoes. The OSP Hearing Officer recommended plaintiff be placed on continued commissary restriction until he surrendered his tennis shoes.

{¶15} 5) Plaintiff filed a response reasserting his tennis shoes were destroyed by Officer Wine at 1:30 p.m. on August 4, 2006, "while Officer Wine was conducting a procedural strip search." However, plaintiff maintained the shoes were, "not documented as contraband on the Inmate Property Record form, as procedure would have it designated." Plaintiff submitted a copy of a property inventory compiled on August 4, 2006, incident to his transfer to a security control unit. The August 4, 2006 inventory does not list any tennis shoes were among the packed items listed. Plaintiff also submitted a copy of a Conduct Report for possession of contraband dated August 4, 2006 and served upon him August 9, 2006. This Conduct Report filed by the Charging Official, Officer Wine, noted a pair of laced tennis shoes and altered shorts were confiscated from plaintiff and designated contraband. The confiscated tennis shoes, according to the language of the Conduct Report, were classified as impermissible property based on plaintiff's security level.

CONCLUSIONS OF LAW

{¶16} 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.

{¶17} 2) An inmate plaintiff may recover the value of confiscated property

destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶18} 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.

{¶19} 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. However, plaintiff has no right to pursue a claim for property in which he cannot prove any rightful 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. *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD; jud, 2005-Ohio-4320; *Griffin v. Ohio Department of Corrections* (2006), 2005-08271-AD.

{¶10} 6) 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.

{¶11} 7) Evidence has shown that not only were plaintiff's tennis shoes considered impermissible property, the shoes were altered by plaintiff when he removed and discarded the shoe laces. Plaintiff's claim for the impermissible altered property is denied. *Kemp v. Ohio State Penitentiary*, Ct. of Cl. No. 2006-02587-AD, 2006-Ohio-7247.

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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

3/20
Filed 4/4/08
Sent to S.C. reporter 6/11/08