

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

MICHAEL WILKINS

Case No. 2007-06217-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO STATE PENITENTIARY

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Michael Wilkins, a former inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), alleged all his personal property was withheld when he was released from OSP on January 27, 2007.

{¶2} 2) Plaintiff asserted his eyeglasses, food box, shoes, slippers, hygiene products, pajamas, shorts, towels, and underwear were not given to him when he was released from custody. Consequently, plaintiff filed this complaint seeking to recover \$700.00, the estimated value of the property items claimed. The filing fee was paid.

{¶3} 3) Defendant denied any liability in this matter. Defendant explained plaintiff was transferred to a segregation unit at OSP on December 22, 2006, and his personal property was stored in the OSP property vault. According to defendant, plaintiff’s property remained in the OSP property vault until January 24, 2007, when the items were transferred to the OSP Receiving and Discharge area in preparation for plaintiff’s release from custody on January 27, 2007. Defendant noted at the time plaintiff was released on January 27, 2007, one bag containing his personal property was returned to him. Defendant contended all of plaintiff’s property was returned upon his release from custody. Defendant asserted plaintiff did not provide any proof to establish any of his property was lost, stolen, or misplaced while under the control of OSP staff.

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CONCLUSIONS OF LAW

{¶4} 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.

{¶5} 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.

{¶6} 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, 53 O.O. 25, 118 N.E. 2d 147.

{¶7} 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.

{¶8} 5) 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.

{¶9} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost or stolen as 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:

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RDK/laa

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