

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

WILLIAM BECKER

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2007-06314-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, William Becker, an inmate incarcerated at defendant's North Central Correctional Institution ("NCCI"), stated he was transferred from the NCCI general population to a segregation unit on May 17, 2006. Plaintiff related that before he was transferred he was ordered by defendant's personnel to unlock his locker box to facilitate an inspection of the contents. Plaintiff's personal property was subsequently packed and delivered into defendant's custody incident to his transfer.

{¶2} 2) Plaintiff explained that when he was released from segregation on or about May 23, 2006, and he regained possession of his property, he discovered his beard trimmer, adapter, cup, an accessory cord kit, and boots were not among the returned property items.

{¶3} 3) Plaintiff filed this complaint seeking to recover damages in the amount of \$127.14, the total replacement cost of his alleged missing property items. Plaintiff submitted the \$25.00 filing fee and seeks reimbursement of that cost.

{¶4} 4) Plaintiff submitted a copy of his property inventory (dated May 18, 2006) compiled by NCCI personnel incident to his transfer to segregation. No beard trimmer, adapter, cup, or boots are listed on this May 18, 2006 inventory. "Cords etc." are listed on the inventory. The inventory bears plaintiff's signature acknowledging that

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all property listed was returned to his possession.

{¶5} 5) Defendant recalled plaintiff was transferred to a segregation unit on May 18, 2006 for an institutional rule violation, specifically, possession of contraband. On that same day, NCCI employee, Officer Shilling packed and inventoried plaintiff's property. There is no record a beard trimmer, cup, adapter, and boots were packed and delivered into the custody of NCCI staff. Defendant denied receiving delivery of a beard trimmer, cup, adapter, and boots. Defendant submitted a copy of plaintiff's property inventory compiled by Officer Shilling listing all of plaintiff's packed property. The inventory bears plaintiff's signature acknowledging the documents represents "a complete and accurate inventory" of all his personal property. The inventory also bears plaintiff's signature acknowledging the fact that all items were returned. The inventory does not list a beard trimmer, cup, adapter, or a pair of boots.

{¶6} 6) Plaintiff filed a response insisting NCCI staff exercised control over his beard trimmer, adapter, cup, boots, and accessory cord kit. Plaintiff contended all items claimed were lost or stolen while under defendant's control. Plaintiff seemingly explained he was coerced into signing the acknowledgment sections on his property inventory. Plaintiff implied his property was left unattended and open to theft before the items were packed. Plaintiff did not produce evidence to establish defendant received delivery of a beard trimmer, cup, adapter, and a pair of boots on May 18, 2006.

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 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) 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.

{¶11} 5) 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 issue 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.

{¶12} 6) Plaintiff's failure to prove delivery of a beard trimmer, adapter, cup, and boots 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.

{¶13} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶14} 8) Plaintiff has failed to show any causal connection between any property loss and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

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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

3/28

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