

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

ROBERT E. PERDUE

Case No. 2007-05407-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

LEBANON CORRECTIONS FAC.

Defendant

FINDINGS OF FACT

{¶ 1} 1) On or about November 15, 2006, plaintiff, Robert E. Perdue, an inmate incarcerated at defendant Lebanon Correction Institution (“LeCI”), was transferred from the LeCI general population to a segregation unit.

{¶ 2} 2) Plaintiff’s personal property, including his television set, was packed and delivered in the custody of LeCI staff incident to the transfer. All of plaintiff’s packed property was moved to the LeCI property room for storage.

{¶ 3} 3) Plaintiff alleged that his television set was damaged at some time while it was being stored in the LeCI property room. Specifically plaintiff claimed that the right side of the television set was cracked and the picture tube was out. Consequently, plaintiff filed this complaint seeking to recover \$215.00, the replacement cost of a new television set. Plaintiff stated that he purchased his television set at sometime in either 2003 or 2004. Plaintiff also requested \$5.00 for postage and copying costs. This claim is denied and the issue will not be further address. Plaintiff was not required to pay a filing fee.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant acknowledged that plaintiff’s television set was packed and placed in storage at LeCI on November 15, 2006. Defendant acknowledged that plaintiff filed a grievance on January 22, 2007 complaining that his television set was damaged. Upon inspection it

was discovered “that although the television set did have a small crack in it; the television set was operable.” Defendant contended that plaintiff failed to prove the television set was damaged while under the control of LeCI personnel. Defendant also disputed plaintiff’s damage claim.

{¶ 5} 5) Plaintiff filed a response insisting that his television set was damaged while in storage at LeCI at sometime between November 15, 2006 to January 22, 2007. Plaintiff claimed that the television set does not function. Plaintiff stated that he would agree to settle this claim for \$155.00. Although plaintiff claimed that his television set was in good working order when it was delivered to LeCI personnel on November 15, 2006, he has not produced sufficient evidence to prove the television set was damaged while being stored in the LeCI property room. Plaintiff submitted a written statement from a fellow inmate Jesse Lockley #467-814 who related that he assisted in packing plaintiff’s property at LeCI on November 15, 2006. Lockley noted that all the property he helped packed “was on and operational too and nothing was broken” including plaintiff’s television set. Plaintiff filed a statement claiming that he heard an LeCI employee admit the television set was broken while under the control of LeCI personnel.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) Plaintiff must produce evidence which affords a reasonable basis for

the conclusion that 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) 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.

{¶ 11} 6) The trier of fact has discretion without constraint to believe all, part, or none of any witness statement presented. See *State v. Long* (1998), 127 Ohio App. 3d 328, 713 N.E. 2d 1. In the instant claim, the trier of fact does not find persuasive the statements plaintiff presented regarding the condition of his television set.

{¶ 12} 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.

{¶ 13} 8) Plaintiff has failed to show any causal connection between any damage to his television set 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*, 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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa

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