

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

KENNETH COLLIER

Plaintiff

v.

DEPARTMENT OF REHABILITATIONS
AND CORRECTIONS

Defendant

Case No. 2007-06101-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 19, 2007, plaintiff, Kenneth Collier, an inmate incarcerated under the custody of defendant, Department of Rehabilitation and Correction, was transferred from defendant's Corrections Medical Center (CMC) to The Ohio State University Medical Center (OSU) due to a self-inflicted injury. Plaintiff was assigned to a satellite room at OSU.

{¶ 2} 2) Plaintiff recalled that when he was placed in the room at OSU he handed over his personal eyeglasses over to a CMC employee because he was "put on a constant suicide watch and was not allowed to have my personal glasses, per orders of Dr. Saha Sumita." Plaintiff maintained that his eyewear was stored "in the vault area of corrections on the 8th floor of OSU hospital." Plaintiff related that he asked about his glasses on or about February 16, 2007 and was informed the eyewear could not be found. Plaintiff stated that he subsequently was informed his eyeglasses had been "completely destroyed." Plaintiff alleged that the eyeglasses were destroyed by a CMC employee.

{¶ 3} 3) On February 22, 2007, a Theft/Loss Report (copy submitted) was filed by CMC employee, Captain Timothy Chalender concerning the loss of plaintiff's eyewear. Chalender recorded in the report that plaintiff's glasses "were taken by

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medical staff and never forwarded to the Shift Lieutenant to be placed in his pack-up.” On April 7, 2007, Captain Chalender filed an Incident Report (copy submitted) regarding the disposition of the eyeglasses. In his description of the incident Chalender related that plaintiff’s “metal framed glasses were confiscated by the OSU nursing staff to prevent (him) from harming himself.” Chalender further related that “[t]he glasses were left at the nursing station and it was reported to me by the OSU medical staff that the glasses had accidentally been broken at the nursing station by placing a heavy item on top of the envelope containing (plaintiff’s) glasses.” Captain Chalender noted that he received a document from the OSU medical staff wherein they admitted confiscating plaintiff’s eyewear and inadvertently breaking the eyewear. Chalender advised that the “form or broken glasses” which were returned to CMC personnel could not be located. Plaintiff insisted that his glasses were broken while under the control of CMC staff. Plaintiff alleged that CMC personnel attempted to make it seem like his glasses were broken while in the custody of OSU nursing staff.

{¶ 4} 4) Plaintiff filed a grievance with defendant concerning his broken eyewear. Plaintiff was offered a settlement of \$150.00 for the eyeglasses. Plaintiff declined the settlement offer and filed this complaint seeking to recover \$232.86, the total replacement cost of a new pair of eyeglasses. Plaintiff was not required to pay a filing fee to pursue this action.

{¶ 5} 5) Defendant denied liability. Defendant asserted that plaintiff’s eyeglasses were broken while under the custody of OSU nursing staff and therefore, he has filed this claim “against the wrong entity.” Defendant contended that plaintiff failed to offer evidence to establish he suffered a loss as a proximate cause of any negligent act or omission on the part of CMC personnel. Defendant maintained that the sole cause of plaintiff’s property damage was an act attributable to OSU 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

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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 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) Plaintiff’s failure to prove delivery of his eyewear to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to damaged property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 12} 7) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness’s testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548.

{¶ 13} 8) Plaintiff has failed to show any causal connection between any damage to his eyewear and any breach of a duty owed by defendant in regard to

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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.

{¶ 14} 9) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss 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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa

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