

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

WARREN V. TINCH

Plaintiff

v.

LEBANON CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-08058-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On July 11, 2006, plaintiff, Warren V. Tinch, an inmate, was transferred from defendant, Lebanon Correctional Institution (“LeCI”) to the Allen Correctional Institution (“ACI”). Before he was transferred, plaintiff was informed by LeCI staff that he would not be permitted to take all his personal property with him to ACI due to the fact defendant determined the amount of property he possessed was in excess of the volume limitations for inmate property possession set by defendant’s policy. Plaintiff was then given the option to either authorize the destruction of the excess property or authorize the mailing of excess items from LeCI to a designated address. Plaintiff did not make any choice regarding the disposition of excess property and left the excluded items at LeCI when he transferred to ACI.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$468.01, the estimated value of the property items withheld incident to his transfer from LeCI to ACI. Plaintiff asserted defendant improperly withheld his property. Subsequently, plaintiff informed the court that he had received some of the claimed withheld items from

defendant and requested his damage claim amount be amended to \$242.57, the estimated replacement cost of the remaining seized property items. Payment of the filing fee was waived.

{¶ 3} 3) Defendant acknowledged a determination was made on July 1, 2006, “that (p)laintiff’s property was in excess of the 2.4 cubic feet permitted by OAC (Ohio Administrative Code) 5120-9-33(B).” Defendant explained plaintiff’s legal documents were included with his personal property items when LeCI staff made the assessment regarding property volume restrictions and consequently plaintiff was not permitted to retain his personal property upon transfer to ACI. Defendant stated “[b]ecause of his (plaintiff’s) failures to address his legal property, all of the property he possessed was considered personal property, and therefore, subject to the 2.4 restriction.” Defendant contended plaintiff refused to make a declaration separating his legal property from his personal property and all items were assessed together. Once the assessment was made plaintiff refused to direct LeCI staff in regard to the disposition of the declared excess property. Defendant advised attempts were made for plaintiff to receive the declared excess property by placing his legal materials in “alternative storage.” Defendant related plaintiff made arrangements to mail out the bulk of his legal material and in turn he received the declared excess property items which had been withheld at LeCI on July 11, 2006. Defendant denied having any knowledge concerning the additional items plaintiff claimed were still in storage at LeCI. Defendant argued plaintiff did not produce any evidence to prove he owned the remaining claimed missing property items or that the property which consists mostly of clothing items was ever stored at LeCI. Defendant did not supply a record of the property withheld at LeCI incident to plaintiff’s July 11, 2006 transfer to ACI.

{¶ 4} 4) Plaintiff filed a response recalling that the property withheld at LeCI was never inventoried by defendant’s personnel. Plaintiff insisted he owned all of the alleged missing property stating “all personal property was shipped in by family members or bought from the Commissary.” Plaintiff observed any property stored in the property vault at LeCI is subject to theft due to the fact inmates have access to the vault and the property stored there.

CONCLUSIONS OF LAW

{¶ 5} 1) Prison regulations, including those contained in the Ohio

Administrative Code, “are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates.” *Steve ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed 2d 418. Additionally, this court has held that “even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence.” *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff alleges that LeCI staff failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 6} 2) This court has previously held that property in an inmate’s possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Consequently, plaintiff’s claim for property loss is denied since he has failed to offer sufficient proof to show he owned these articles consisting mostly of clothing items.

{¶ 7} 3) Assuming plaintiff could prove ownership his claim for property loss would still not prevail. Plaintiff’s failure to prove delivery of certain property 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.

{¶ 8} 4) Plaintiff has failed to prove, by a preponderance of the evidence, any property items were stolen or lost as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-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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