

[Cite as *Bannister v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-656.]

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

GEORGE DEWAYNE BANNISTER

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2007-05687-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, George D. Bannister, an inmate incarcerated at defendant's Allen Correctional Institution ("ACI"), stated there was "a big power outage" at the institution on March 13, 2007, at approximately 10:30 p.m. Plaintiff related when power was restored at ACI he discovered his Samsung television set was not functioning. According to plaintiff, "my tv comes on by itself and the (volume) up button is locked on high (volume) and won't come down, and also sometimes when I change to another channel, my tv just cut off by itself and I have to reprogram all of the tv stations all over again getting a lot of interference on all of the tv stations." Plaintiff pointed out his television set worked fine before March 13, 2007.

{¶2} 2) Plaintiff asserted defendant should bear responsibility for replacing his television set that he maintains was damaged as a direct result of an electrical power surge at ACI. Consequently, plaintiff filed this complaint seeking to recover \$300.00, the estimated replacement cost of a television set. Plaintiff was not required to pay a filing fee.

{¶3} 3) Defendant denied liability in this matter. Defendant contended plaintiff failed to offer sufficient evidence to establish his television set was damaged by an electrical power surge at ACI. Defendant explained, "[e]ach housing unit at ACI is equipped with a series of breaker panels that react to any surge or problem with the electrical system to prevent the type of damage alleged in the complaint." Defendant argued plaintiff did not produce any evidence to show the breaker panels did not function resulting in the damage claimed. Defendant observed no inmate at ACI other than plaintiff reported any power surge related damage to their television sets or other electrical devices.

{¶4} 4) Despite filing a response, plaintiff did not provide evidence that his television set was damaged as a proximate cause of any act or omission on the part of defendant.

CONCLUSIONS OF LAW

{¶5} 1) Plaintiff has the burden of proving his property damage was caused by a power surge and the electrical malfunction was attributable to negligent acts or omissions on the part of defendant. *Pryor v. Southern Ohio Correctional Facility* (1997),

97-03026-AD; jud.

{¶16} 2) 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.

{¶17} 3) 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.

{¶18} 4) Plaintiff has failed to prove a causal connection between the damage to his television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶19} 5) 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.

{¶110} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged as a proximate result of any negligence on the part of defendant. *Hill v. Department of Rehabilitation and Correction* (1998), 98-06908; *King v. Grafton Correctional Institution* (2000), 2000-04120-AD; *Drippon v. Southern Ohio Correctional Facility* (2001), 2001-03739-AD; *Cale v. Toledo Correctional Institution* (2002), 2001-10727-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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