

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

DAVID E. CLARK

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-03220-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, David E. Clark, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), stated he delivered a laundry bag containing his personal clothing to OSP staff in March 2006. On or about March 16, 2006, a fire occurred in the OSP laundry room destroying the laundry of multiple inmates.

{¶ 2} 2) Plaintiff alleged his laundry, including a pair of sweat pants, a tank top, and a t-shirt, was destroyed during the fire that occurred in the OSP laundry room on March 16, 2006. Subsequently, plaintiff filed this complaint contending defendant was responsible for the loss of his clothing items and seeking to recover \$31.65, the entire replacement cost of the allegedly destroyed property. Payment of the filing fee was waived.

{¶ 3} 3) Defendant acknowledged a fire occurred in the OSP laundry room on March 16, 2006 which damaged the laundry bags of several inmates. However, defendant determined that none of the damaged laundry bags belonged to plaintiff. Therefore, defendant denied liability in this matter based on the contention plaintiff failed

to prove he delivered a laundry bag to OSP staff during March 2006. Defendant explained an inventory was conducted of the laundry bags damaged and no bag belonging to plaintiff was among the items counted.

{¶ 4} 4) Plaintiff filed a response insisting his laundry was destroyed in a fire at the OSP laundry room on March 16, 2006. Plaintiff suggested the bag containing his laundry was completely consumed during the fire and consequently, no items remained to be recorded in any inventory. Plaintiff contended OSP personnel acknowledged his clothing items were destroyed in the March 2006 fire. Plaintiff did not provide any confirmation from OSP personnel that his personal clothing was delivered to defendant and subsequently destroyed in a fire.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 6) Plaintiff’s failure to prove delivery of his clothing 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.

{¶ 11} 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.

{¶ 12} 8) Plaintiff has failed to show any causal connection between any damage to his clothing and any breach of a 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.

{¶ 13} 9) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or mission 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
9/30
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