

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

THOMAS P. LEACH, JR.

Plaintiff

v.

WARREN CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-06369-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Thomas P. Leach, Jr., an inmate formerly incarcerated at defendant, Warren Correctional Institution (“WCI”), stated packages of typewriter ribbons and correction tapes were sent to him in September 2007 and were subsequently lost or stolen while under the control of WCI mailroom personnel.

{¶ 2} 2) Additionally, plaintiff maintained that two CD players, six towels, three pairs of sweat pants, a lamp, a set of headphones, a fan, an adapter, eight musical CD’s, and various items purchased at the WCI commissary were stolen from his cell. Plaintiff asserted property items were stolen from his cell on “various dates” at “various times.” Plaintiff reported a theft of property to defendant’s staff on November 26, 2007 when he pointed out a CD player and food items were stolen from his cell. In response to this report, defendant conducted a shakedown search and recovered two towels, two blankets, and a set of headphones owned by plaintiff. These recovered items were returned to plaintiff’s possession. No other property was recovered.

{¶ 3} 3) Plaintiff contended his property was stolen as a result of negligence

on the part of defendant in failing to provide adequate security to protect his property. Plaintiff filed this complaint seeking to recover \$743.99, the replacement cost of the missing property. The filing fee was paid.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant argued plaintiff failed to produce sufficient evidence to establish his property was lost or stolen as a proximate cause of any negligence on the part of WCI personnel. Defendant denied exercising any control over any claimed missing property. Defendant asserted plaintiff failed to prove WCI staff received delivery of any property intended for him. Defendant denied WCI staff acted negligently in responding to any reported theft occurrence. Defendant denied breaching any duty of care owed to plaintiff in regard to property protection.

{¶ 5} 5) Plaintiff filed a response insisting defendant should bear liability for the loss of all property claimed.

CONCLUSIONS OF LAW

{¶ 6} 1) The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1986), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 7} 2) Defendant is not responsible for actions of other inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 8} 3) 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.

{¶ 9} 4) 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.

{¶ 10} 5) 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.

{¶ 11} 6) 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.

{¶ 12} 7) Plaintiff's failure to prove delivery of typewriter supplies 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.

{¶ 13} 8) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 14} 9) "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court . . ." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d 744, 2003-Ohio-5333, 798 N.E. 2d 1121, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 15} 10) 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.

{¶ 16} 11) Plaintiff has failed to show any causal connection between his property loss and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-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
10/7
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