[Cite as *Hampton v. Chillicothe Correctional Inst.*, 2008-Ohio-7126.]

Court of Claims of Ohio

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LEE HAMPTON

Plaintiff

v.

CHILLICOTHE CORRECTIONAL INST.

Defendant

Case No. 2008-05419-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Lee Hampton, an inmate incarcerated at defendant, Chillicothe Correctional Institution ("CCI"), filed three separate and distinct actions against defendant. Initially, plaintiff claimed his lamp with an extra light bulb was lost at sometime between January 16, 2002 and October 4, 2007 while being stored under the control of CCI personnel. In his second claim, plaintiff asserted twelve donuts he had purchased from an inmate organization were confiscated by CCI staff and either "donated" or "destroyed" on or about June 26, 2007. Thirdly, plaintiff alleged he was wrongfully charged a $2.00 co-pay for medical services on or about November 28, 2007. Plaintiff explained he was charged the co-pay for an optical service treatment, which he asserts is not supposed to be co-pay eligible. Plaintiff's total damage claim for his three actions amounts to $24.52. The filing fee was paid. For the purpose of this claim, the court finds plaintiff's cause of action for the loss of his lamp accrued in March 2007 when he stated he discovered the property was missing.

{¶ 2} 2) Defendant denied liability in this matter. First defendant denied any

CCI personnel lost plaintiff's lamp and light bulb. Also, defendant denied any liability for the loss of twelve donuts. Defendant explained the sale of the donuts was conditional. The notice for the donut sale provided "If you are not present to pick up your donuts, they will be donated to the Alvis house." At the time the purchased donuts were distributed plaintiff was housed in a segregation unit. Consequently, his donuts went unclaimed and became subject to donation or destruction. Finally, defendant contended the medical co-pay plaintiff was charged was appropriate under institution policy. Defendant pointed out plaintiff "requested an optical exam" and he was subsequently seen in the CCI infirmary for that purpose. Defendant's internal Administrative Rule 5120-9-31VI. (B)(1) provides: "B. Co-Pay Charges 1. All medical services initiated by an inmate through a Health Services Request form (DRC-5373) will carry a $2.00 co-pay charge."

{¶ 3} 3) Plaintiff filed a response insisting his lamp with light bulb was lost while under the control of CCI staff at sometime after he was transferred from the Ross Correctional Institution ("RCI") to CCI. Plaintiff submitted a copy of a property inventory dated January 14, 2002 and compiled at RCI incident to his transfer to CCI. This inventory clearly shows a lamp was packed at RCI and forwarded to CCI. Plaintiff explained that when he first arrived at CCI he was informed he could not possess his lamp in his initial housing assignment and therefore the lamp along with other items were stored in the CCI vault. Plaintiff recalled he was moved to a housing assignment in March 2007, where he was permitted to possess his lamp and he then contacted CCI personnel in an attempt to recover his lamp from the CCI vault. Apparently, the lamp could not be located in the CCI vault. Plaintiff maintained his lamp was lost at sometime after he was transferred from RCI to CCI and did not discover the loss until March 2007. Plaintiff pointed out he purchased the lamp "around 1999/2000" and the light bulb at sometime in 2001.

{¶ 4} 4) Furthermore, plaintiff asserted he should be entitled to recover the cost of the donuts he purchased that were forfeited due to the fact he was housed in a segregation unit at the time the donuts were distributed. Plaintiff related he was wrongfully placed in segregation in the first place, and he consequently contends defendant should bear the responsibility for the loss of the food items. Plaintiff contended defendant could have held the donuts for him, but refused. Plaintiff denied

he was ever notified of the fact that unclaimed donuts would be forfeited. Plaintiff did not recall any notice about conditional donut sales being posted in inmate housing areas. Plaintiff stated he purchased the donuts on May 3, 2007, was placed in segregation on June 21, 2007, and was released on June 27, 2007 after "being exonerated on June 26, 2007." Plaintiff asserted defendant could have held his donuts after learning he was to be released from segregation the day after the assigned donut distribution date. Plaintiff contended defendant should have held his donuts since other cases existed where donuts were held for inmates who were either on a visit or a one day round trip for medical appointments. Plaintiff argued defendant acted unreasonably under the circumstances in forfeiting his donuts and not holding the food items for one day.

{¶ 5} 5) Plaintiff asserted defendant had no authority to deduct the $2.00 co-pay from his inmate account pursuant to internal institutional policy. Plaintiff reasserted co-pays do not apply to "optical services" pursuant to any written policy or information supplied by defendant. Additionally, plaintiff recalled he was never informed in writing about applicable co-pays at the time he was received into defendant's custody and this failure to inform constitutes a violation of defendant's policy. Plaintiff related defendant's policies are not readily available in the inmate library. Plaintiff contended defendant's policy does not reference "optical services" as a medical service applicable to co-pay charges. Plaintiff denied submitting a "Health Services Request" for the "optical services" he received and therefore, he contends he should not have been charged a co-pay in the absence of a documented "Health Services Request" being filed. Conversely, plaintiff recalled he received a pass for the "optical services" and did not submit a "Health Services Request." Plaintiff argued "optical services" are generally not considered "medical services" and should never be subject to medical service co-pays. Plaintiff denied he was charged a co-pay for a prior eye exam (approximately August 8, 2005) or a prior time when he was fitted with eyeglasses (October 11, 2005).

CONCLUSIONS OF LAW

{¶ 6} 1) Prison regulations, including those regarding co-pay charges, contained in the Ohio Administrative Code, "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State 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 that plaintiff alleges that employees of defendant have failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 7} 2) Alternatively, considering defendant's acts could be construed as a wrongful collection of plaintiff's funds, plaintiff could still not prevail. Plaintiff is seeking to recover funds he asserted were wrongfully withheld; the funds sought for recovery represent a claim for equitable relief and not money damages. Consequently, this court at the Administrative Determination level has no jurisdiction over claims grounded in equity based on the wrongful collection of funds from an inmate account. See *Flanagan v. Ohio Victims of Crime Fund*, Ct. of Cl. No. 2003-08193-AD, 2004-Ohio-1842; also *Blake v. Ohio Attorney General's Office*, Ct. of Cl. No. 2004-06089-AD, 2004-Ohio-5420; and *Johnson v. Trumbull Corr. Inst.*, Ct. of Cl. No. 2004-08375-AD, jud, 2005-Ohio-1241; *Norman v. Ohio Dept. of Rehab. and Corr.* (2008), Ct. of Cl. No. 2007-09283-AD. Plaintiff's claim regarding an improper co-pay collection is denied.

{¶ 8} 3) Plaintiff's claim is denied regarding the issue of a refund for the purchase price of the donuts. When plaintiff purchased the donuts he agreed to the terms and conditions of purchase which required his physical presence to accept delivery. Plaintiff's lack of knowledge of the conditions for delivery is irrelevant to the issue of liability. Plaintiff failed to satisfy the condition of the purchase and has consequently waived the right to any refund of payment or receipt of the products purchased. See *Bradsher v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2003-04627-AD, 2003-Ohio-4490; *Thomas v. Warren Correctional Inst.*, Ct. of Cl. No. 2005-07224-AD, jud, 2005-Ohio-6586; *Price v. Dept. of Rehab. and Corr.*, Ct. of Cl. NO. 2006-01017-AD, 2006-Ohio-7158.

{¶ 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) 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.

{¶ 11} 6) Plaintiff has the burden of proving, by a preponderance of the evidence, he suffered a loss that was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶ 12} 7) 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.

{¶ 13} 8) 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.

{¶ 14} 9) Negligence on the part of defendant has been shown in respect to the loss of the lamp and light bulb claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 15} 10) A plaintiff is competent to testify in respect to the true value of his property. *Gaiter v. Lima Correctional Facility* (1988), 61 Ohio Misc. 2d 293, 578 N.E. 2d 895.

{¶ 16} 11) Defendant is liable to plaintiff for property damage in the amount of $17.02, plus the $25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of $42.02, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
12/18
Filed 12/31/08

Sent to S.C. reporter 3/13/09