

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

RONALD A. NAPIER

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-05354-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On or about January 10, 2008, plaintiff, Ronald A. Napier, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), was transferred from the SOCF general population to a segregation housing unit. Plaintiff’s personal property was inventoried, packed, and delivered into the custody of SOCF staff incident to this transfer.

{¶ 2} 2) Plaintiff asserted that when he was returned to the general population on or about January 15, 2008, he was not provided with any “state-issue” clothing. Plaintiff also asserted his “personal” clothing items were lost as well as his radio/cassette player. Plaintiff stated he did not have any “T-shirts, Briefs, Socks, Towels, Washcloths, (and) Laundry bag” in his possession until February 2, 2008. Plaintiff contended that due to the fact he was deprived of clothing items he was forced to practice inadequate hygiene and lost certain recreation opportunities. Plaintiff stated, “I’m suffering the humiliation and (indignity) of having to exercise extreme methods of bathing and washing.” Plaintiff maintained the alleged clothing deprivation constituted a violation of his constitutional rights under the Eighth Amendment. Plaintiff filed this

action requesting \$2,500.00 in damages “for personal loss and 8th Amend Violations.” Payment of the filing fee was waived. The “personal loss” plaintiff allegedly suffered consists of claimed lost property including state issue clothing, a cassette player, cassettes, a sweatshirt, sweatpants, sneakers, a cup, and a Kufi Cap.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant acknowledged plaintiff’s property was packed and delivered into the custody of SOCF staff on January 10, 2008 incident to plaintiff’s transfer to a segregation unit. Defendant explained plaintiff filed multiple complaints regarding an alleged property loss through February, March, and April 2008. Defendant denied losing any of plaintiff’s property. Defendant denied packing any of the property claimed with the exception of a cup, an item which was ultimately returned to plaintiff’s possession. Defendant submitted a copy of plaintiff’s property inventory dated January 10, 2008. The inventory bears plaintiff’s signature acknowledging the document as a complete and accurate listing of his property and acknowledging that all property listed was returned. Defendant denied plaintiff was deprived of state issue clothing.

{¶ 4} 4) On October 8, 2008, this court granted plaintiff’s motion for extension of time to submit a response to defendant’s investigation report. A check of the docket reveals plaintiff chose not to file a response.

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) Plaintiff's failure to prove delivery of certain property items 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.

{¶ 10} 6) 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.

{¶ 11} 7) This court does not recognize any entitlement to damages for mental distress and extraordinary damages for allegations of simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056. Plaintiff's claims for mental anguish, emotional distress, and physical discomfort are denied. See *Waver v. Ohio Department of Corrections*, 2006-02960-AD, 2006-Ohio-7250.

{¶ 12} 8) Plaintiff himself filed this claim seeking redress for alleged violations of his constitutional rights under the Eighth Amendment. Accordingly, plaintiff's claim, based on alleged violations of his constitutional rights is dismissed. This court lacks jurisdiction to hear a claim to the extent it asserts constitutional violations. *Gersper v. Ohio Dept. of Hwy. Safety* (1994), 95 Ohio App. 3d 1, 641 N.E. 2d 1113.

{¶ 13} 9) To the extent plaintiff raises issues regarding property deprivation due to his housing assignment, the court lacks jurisdiction to hear such claims. Inmate complaints regarding the conditions of confinement are treated as claims arising under 42 U.S.C. 1983. *State ex rel. Carton v. Schotten*, 70 Ohio St. 3d 89, 91, 1994-Ohio-37, 637 N.E. 2d 306. Such claims may not be brought against the state in the Court of Claims because the state is not a "person" within the meaning of Section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701, 109 S. Ct. 2702, 105 L. Ed. 2d 598; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230. Accordingly, this court is without jurisdiction to determine plaintiff's claims.

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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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