

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

TYRONE CARD

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-07438-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On or about April 22, 2008, plaintiff, Tyrone Card, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), was transferred from a segregation unit to suicide watch for one day. Plaintiff’s personal property was inventoried, packed, and delivered into defendant’s custody incident to this transfer. Plaintiff maintained SOCF staff failed to pack all his personal property and consequently he claimed several items were lost or stolen.

{¶ 2} 2) Plaintiff claimed the following items were missing: one bowl, one cup, a wooden brush, two combs, two containers of cocoa butter, baby oil, a soap dish, seven pairs of undershorts, a set of thermal underwear, three bars of soap, three deodorants, three legal pads, seven envelopes, three large envelopes, lip balm, four boxes of cakes or pastries, two bags of candy, a box of crackers, six soups, photographs, mail, addresses, legal work, and other documents. Plaintiff implied his property was lost or stolen as a proximate cause of negligence on the part of defendant and he has consequently filed this complaint seeking to recover \$51.30, the estimated

replacement value of his alleged missing property. Payment of the filing fee was waived.

{¶ 3} 3) Defendant denied any liability in this matter and asserted all property owned by plaintiff that was stored in the SOCF property vault was returned to plaintiff's possession on July 15, 2008 when he was released from segregation. Evidence in the form of plaintiff's property inventory compiled on April 22, 2008 shows some of the property items he claimed as missing including letters, papers, tablets, soups, cakes and pastries, soap, deodorant, and a bowl were packed and returned to his possession. Plaintiff signed this inventory acknowledging all the property listed was returned to his possession. Defendant denied SOCF staff ever exercised control over any property owned by plaintiff other than the items packed and inventoried on April 22, 2008.

{¶ 4} 4) Plaintiff filed a response insisting all the property items he claimed were either lost or stolen while under defendant's control.

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) 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.

{¶ 9} 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.

{¶ 10} 6) 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.

{¶ 11} 7) 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.

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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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