

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

MYRON R. PHILLIPS

Plaintiff

v.

RICHLAND CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-08272-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 1, 2008, plaintiff, Myron R. Phillips, an inmate incarcerated at defendant, Richland Correctional Institution (RiCI), was taken on a round trip transfer to the Corrections Medical Center (CMC). Plaintiff maintained that incident to this transfer, all his personal property was removed from his bed area by RiCI staff and forwarded to the RiCI officer's station. Plaintiff pointed out that "while I was gone" some of his property was confiscated and declared contraband and the remainder of his property was then moved back to his bed "area unsecured." Plaintiff alleged that his clock radio, white Nike tennis shoes, headphones, and Bun-B CD were lost or stolen while he was away at CMC. Plaintiff implied that defendant should bear liability for his property loss and he has consequently filed this complaint seeking to recover \$195.76, the estimated replacement value of his alleged missing property items. Payment of the filing fee was waived.

{¶ 2} 2) Defendant explained that plaintiff failed to secure his property in his locker box during the time he was at CMC and made no other attempts to secure his

property. Additionally, defendant asserted that plaintiff failed to prove he actually owned any of the missing property items. Defendant related that “[w]hen an inmate is scheduled for a Round Trip, his property will be secured in his assigned locker box and remain at his bed area.” Defendant contended that it was plaintiff’s responsibility to secure his property before he went to CMC. Defendant further contended that plaintiff acknowledged he did not place any of his claimed property items inside a secured locker box.

{¶ 3} 3) Plaintiff filed a response insisting that RiCI staff took possession of his locked locker box, examined the contents, confiscated some items, and returned the unlocked locker box containing his property back to his living area. Plaintiff argued that defendant’s act of returning an unlocked unsecured locker box containing his property to his living area constituted actionable negligence.

CONCLUSIONS OF LAW

{¶ 4} 1) 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.

{¶ 5} 2) 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 5) 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 *Meniffee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 9} 6) “Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . 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.

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

{¶ 11} 8) Defendant is not responsible for thefts committed by 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.

{¶ 12} 9) The fact defendant supplied plaintiff with a locker box to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 13} 10) 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. The court finds plaintiff's assertions persuasive in regard to the fact that he owned all the property claimed and the fact that defendant took possession of the property returning the items in an unsecured state while plaintiff was absent from his living area.

{¶ 14} 11) Negligence on the part of defendant has been shown in respect to the issue of property protection of plaintiff's headphones, shoes, clock radio, and CD. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD, jud.

{¶ 15} 12) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239, 577 N.E. 2d 160.

{¶ 16} 13) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462.

Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31.

{¶ 17} 14) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 544 N.E. 2d 750. Plaintiff has suffered damages in the amount of \$100.00.

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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 \$100.00. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
4/21
Filed 5/26/09
Sent to S.C. reporter 9/29/09