

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

CURTIS JOHNSON

Plaintiff

v.

LONDON CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-09325-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 28, 2008, plaintiff, Curtis Johnson, an inmate incarcerated at defendant, London Correctional Institution (“LoCI”), was transferred from the LoCI general population to Inmate Health Services (“IHS”) for medical treatment. Plaintiff related that incident to this medical transfer he removed all his clothing and was subject to a strip search. Plaintiff pointed out he placed all his clothing in a plastic bag and put on a hospital gown. Plaintiff stated “the last thing I removed was my gold chain and cross and it had a double lock on it, so it took me a minute (to) remove it.” Plaintiff further stated he raised the cross and chain to show it to the LoCI Correction Officer present and then “placed the chain in my pants pocket then I rolled them up and tied them in a knot and placed them in the bag, and handed them (to) the officer.” According to plaintiff, he assumed the bag containing his clothing and cross and chain would be placed in storage until he returned from receiving medical treatment. Plaintiff recalled that when he ultimately regained possession of his clothing he could not find the cross and chain among the returned clothing.

{¶ 2} 2) Plaintiff contended his chain was stolen as a proximate cause of negligence on the part of LoCI staff in handling his property. Plaintiff stated “[t]he officers that packed me up did not follow proper pack up procedures, if (they) had done so, my chain would have not (been) stolen from my pickup.” Plaintiff filed this complaint seeking to recover \$300.00, the estimated value of his cross and chain. Payment of the filing fee was waived.

{¶ 3} 3) Plaintiff reported the loss of his cross and chain to LoCI staff on May 2, 2008 and an “Inmate Property Theft/Loss Report” (copy submitted) was filed by LoCI employee, E.M. Coffey. In the report, Coffey noted he “searched I.H.S., called officer that was working here on April 28, 2008 and called laundry.” Addressing the investigation of the reported theft, Coffey recorded “I did not find it (cross and chain) here at I.H.S. The officer working here on April 28 told me that Johnson (plaintiff) did not give him a (necklace) and his clothes were sent to laundry. I contacted laundry and was told they have not found a (necklace).”

{¶ 4} 4) Defendant acknowledged plaintiff’s clothes were sent to the LoCI “laundry for washing in accordance with institutional practice.” Defendant also acknowledged plaintiff was issued a title for a necklace and cross in 2004. Defendant denied liability in this matter based on the contention plaintiff did not offer sufficient evidence to prove his necklace and cross were lost or stolen while in the custody and care of LoCI personnel. Defendant has no record plaintiff ever delivered the necklace and cross to any LoCI staff member. Defendant pointed out plaintiff’s property was taken to the LoCI “property vault where the officers there inventoried and washed his clothes as required by policy.” Defendant insisted “[t]here was no jewelry found in (plaintiff’s) property.” Defendant related “the Vault Officers (do) not check (inmate’s) pockets prior to washing clothes.”

{¶ 5} 5) Plaintiff filed a response asserting he placed his gold necklace in his pants pocket pursuant to instruction received from the officer at IHS. Plaintiff specifically stated, “[t]he officer told me to put my necklace in my pants pocket.” Plaintiff identified the officer working at IHS on April 28, 2008 as B. Adams, Jr. Plaintiff maintained any LoCI employee who packed his property had a responsibility to note items of value received and to execute a special form reflecting receipt of valuable property. Plaintiff contended defendant should bear liability for the loss of his gold

necklace by sending the item along with his clothes to the LoCI laundry. Plaintiff submitted written statements from two fellow inmates who both noted plaintiff possessed a gold chain and cross.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 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) 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} 5) Prison regulations "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, 479, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Connor* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Indeed, the 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 plaintiff asserts claims based upon alleged violations of internal rules and regulations, he fails to state a claim for relief.

{¶ 11} 6) 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, 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.

{¶ 12} 7) 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 damages. *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.

{¶ 13} 8) "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.

{¶ 14} 9) Plaintiff's failure to prove delivery of a necklace and cross 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.

{¶ 15} 10) Plaintiff has failed to prove, by a preponderance of the evidence, any property items were stolen or lost as a proximate result of any negligent conduct attributable to 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:

Curtis Johnson, #239-741
P.O. Box 69
London, Ohio 43140-0069

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
6/10
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