

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

PERCY HUTTON

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-10641-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Percy Hutton, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), related his personal green cotten blanket was confiscated by OSP staff on December 10, 2007 and never returned to his possession.

{¶ 2} 2) In a totally unrelated matter, plaintiff claimed his radio/cassette player, three laundry bags, battery charger, and combination lock were confiscated by OSP personnel on February 19, 2008 and never returned. Plaintiff also claimed his clamp-on fan was damaged by OSP personnel on that same day.

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$118.24, the estimated replacement value of the confiscated and damaged property. Payment of the \$25.00 filing fee was waived.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant acknowledged plaintiff’s cell was searched on July 13, 2007, December 10, 2007, and February 19, 2008. Defendant further acknowledged items in plaintiff’s possession were confiscated incident to each search. Defendant recalled an altered laundry bag

and altered electrical items were confiscated on July 13, 2007, declared contraband and subsequently destroyed. Among the electrical items confiscated was a device plaintiff described as a battery charger. Defendant related a "CD player belonging to Inmate Craig" was among property confiscated during the February 10, 2007 search of plaintiff's cell. Plaintiff was issued a "Conduct Report" (copy submitted) and the confiscated items were declared contraband. Defendant pointed out "4 extra laundry bags and a locker box with a lock on it" were confiscated during the February 19, 2008 search of plaintiff's cell. Plaintiff was issued a "Conduct Report" (copy submitted) incident to this cell search. Defendant submitted a copy of an "Informal Complaint Resolution" plaintiff filed on March 4, 2008 in which he alleged OSP staff "took and gave away my personal blanket" on or about December 10, 2007 and noted the handle on his fan had been broken. Defendant submitted a copy of a "Notification of Grievance" plaintiff filed on July 27, 2008 in which he wrote "[m]y lock was replaced, . . . my blanket was replaced (and) was given back one of my personal laundry bags of the 4 that were taken." Defendant has contended plaintiff failed to offer sufficient proof to establish he was the rightful owner of the fan, and confiscated radio/cassette player. Defendant denied confiscating another radio/cassette player from plaintiff. Defendant asserted plaintiff cannot maintain an action to recover damages for the loss of altered property, such as the battery charger or property held in excess of possession limits, such as the three laundry bags (inmate possession limit for laundry bags is one). Defendant further asserted plaintiff cannot pursue a claim for returned property.

{¶ 5} 4) Plaintiff filed a response insisting he was the rightful owner of all confiscated and damaged property claimed. Plaintiff denied he possessed any altered property. Plaintiff explained he and Inmate Craig with OSP permission exchanged the radio/cd player and radio/cassette player referenced in this claim. Plaintiff denied his combination lock and blanket were replaced. Plaintiff admitted he was given a white state issue blanket, but noted the blanket is marked "Property of OSP" and does not constitute a replacement for personal property. Plaintiff submitted a written statement from Inmate Donald Craig, who noted he "loan(ed)" his CD player to plaintiff in December 2007. Craig also noted he received plaintiff's cassette player in exchange and the exchange of electronic devices was carried out with the permission of OSP personnel. Craig related his cell was searched in December 2007 and plaintiff's

cassette player was confiscated. Craig also related “Hutton received his Cassette Walkman back when he returned from” segregation. Plaintiff submitted a written statement from fellow inmate Danny Hill who wrote he witnessed OSP staff confiscate “a walkman cassette/radio” from plaintiff’s cell on December 19, 2008. Plaintiff submitted a second statement from Donald Craig who related he saw OSP personnel remove “laundry bags, a plug-in battery charger and a TV cable” from plaintiff’s cell on February 19, 2008. Craig also related that he observed an OSP employee holding an object “that looked like Hutton’s walkman.” there is no record OSP personnel confiscated a Walkman radio/cassette player from plaintiff’s possession on February 19, 2008.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 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) 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.

{¶ 11} 6) 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 trier of fact finds the plaintiff's statements and the statements of his witnesses are not particularly persuasive in regard to the assertion defendant confiscated a radio/cassette player from his possession on February 19, 2008.

{¶ 12} 7) Plaintiff's failure to prove delivery of a radio/cassette player 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.

{¶ 13} 8) Plaintiff has failed to show any causal connection between any damage to his fan and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

{¶ 14} 9) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD. Evidence has shown defendant returned to plaintiff a blanket and lock.

{¶ 15} "10) Plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD; jud, 2005-Ohio-4320; *Griffin v. Ohio Department of Corrections* (2006), 2005-08271-AD.

{¶ 16} 11) An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Restricted property declared impermissible includes loaned property. *Maxwell v.*

Richland Correctional Inst., Ct. of Cl. No. 2007-03935-AD, 2008-Ohio-2868. In the instant claim, plaintiff, by loaning a radio/cassette player to a fellow inmate, effectively relinquished all ownership rights in the property. See *Johnson v. Ohio Reformatory for Women*, Ct. of Cl. No. 2004-01087-AD, 2004-Ohio-4818.

{¶ 17} 12) 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
6/8
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