

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

LARRY A. BUNTING

Plaintiff

v.

MARION CORR. INST.

Defendant

Case No. 2008-11206-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 17, 2008, plaintiff, Larry A. Bunting, an inmate incarcerated at defendant, Marion Correctional Institution (MCI), was transferred from the MCI general population to a segregation unit after his cell was subject to a shakedown search by MCI staff. Plaintiff related that his property was packed incident to the transfer to segregation by MCI employee, Officer Jolliff. Plaintiff further related that Officer Jolliff “explained to me that she did my pickup from the cell to the Officer’s restroom.” Plaintiff’s property was subsequently removed to the MCI property vault.

{¶ 2} 2) Plaintiff maintained that when he was released from segregation and regained possession of his property on June 26, 2008, he discovered several items were missing. Plaintiff reported that the following items were missing: one parts book, one copy card, one 3-band equalizer, one double male end cord, one dark blue towel, one jack for his television set, one pair of dark blue silk shorts, two bars of soap, one

lotion, one shampoo, one set of beard trimmers, one mirror, three sets of scissors, and two sets of batteries. Plaintiff contended that his property was lost or stolen as a proximate cause of negligence on the part of MCI staff in either conducting an untimely pack-up or in failing to adequately protect his property once he was transferred to segregation. Plaintiff filed this complaint seeking to recover \$104.52 for property loss damages. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Defendant acknowledged that property in the possession of plaintiff was packed on June 17, 2008 and stored in the MCI property vault. Defendant explained that some of the property in plaintiff's possession was classified as contraband since the items would not fit into plaintiff "2.4 locker box" and consequently exceeded volume limits for inmate property possession. The excessive property was placed in a bag and stored in the MCI property vault. Other contraband items were confiscated. Defendant stated that all property stored in the MCI vault was returned to plaintiff. One of the confiscated items was a "Turbo Tech Book" that did not belong to plaintiff. Defendant suggested that the confiscated "Turbo Tech Book" may be the "parts book" that plaintiff claimed in his complaint. Defendant denied that any of the items claimed by plaintiff were lost or stolen while under the control of MCI staff.

{¶ 4} 4) Plaintiff filed a response and attached a copy of an "Incident Report" dated October 17, 2008 (?) and purportedly drafted by Officer Jolliff. In this report, it is noted that plaintiff's property was originally stored in a restroom on June 17, 2008 due to a shift change at MCI. Listed property items stored in the MCI restroom included "clippers, copy card, scissors, towel, also the 3 band EQ and double male cord for EQ."

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 that 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 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. The evidence tends to show defendant did not pack any of his missing property on June 17, 2008.

{¶ 10} 6) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst.*, Ct. of Cl. No. 2002-05751; 2005-Ohio-4455; obj. overruled, 2005-Ohio-5068.

{¶ 11} 7) 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.

{¶ 12} 8) This court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

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

{¶ 14} 10) 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*.

{¶ 15} 11) 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.

{¶ 16} 12) Plaintiff has failed to prove a causal connection between any property loss and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶ 17} 13) Plaintiff has failed to prove, by a preponderance of the evidence, that any of his property was stolen 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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
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