

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

MEREDITH SHERFIELD

Plaintiff

v.

WARREN CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-01905-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Meredith Sherfield, an inmate formerly incarcerated at defendant, Warren Correctional Institution (“WCI”), related he was transferred to a segregation unit at some unspecified date prior to November 5, 2007. Plaintiff alleged his personal property was left unsecured after his transfer to segregation and several items were stolen by an unidentified inmate. Plaintiff claimed his fan, beard trimmer, tv antenna with remote control, two sweat suits, and four towels with wash cloths were stolen. Records show plaintiff was transferred to segregation at WCI on September 21, 2007.

{¶ 2} 2) In a completely different matter, plaintiff claimed that at some date after he had been transferred from WCI to the Lebanon Correctional Institution (“LeCI”), several items of his personal property were confiscated and destroyed incident to a shakedown search. Plaintiff maintained his Super III radio, CD player, replacement antenna, Koss headphones, and replacement fan were confiscated and subsequently

destroyed. Plaintiff was transferred from WCI to LeCI on November 5, 2007.

{¶ 3} 3) Plaintiff filed this complaint contending his property was stolen at WCI as a proximate cause of negligence on the part of WCI personnel in failing to provide adequate security. Plaintiff seeks recovery for property loss at WCI in the amount of \$143.42. Plaintiff implied his property was improperly confiscated and destroyed at LeCI and he seeks damages for this claimed property loss in the amount of \$160.68. Plaintiff's total damage claim amounts to \$304.10. Payment of the filing fee was waived.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant explained none of the items plaintiff claimed were stolen at WCI were ever listed on any property inventory compiled at that institution. A property inventory dated July 20, 2007 does list a pair of sweat pants. Another inventory compiled on August 26, 2006 when plaintiff arrived at WCI does not list any of the items plaintiff claimed were stolen. An inventory compiled on November 2, 2007 when plaintiff was transferred from WCI to LeCI lists a sweat shirt, a pair of sweat pants and two towels. Plaintiff signed this inventory certifying the document represented a complete and accurate accounting of all his property. Defendant submitted a document, "Personal Accountability Sheet" indicating plaintiff received personal items on July 23, 2007 that included a sweat shirt, a pair of sweat pants, and two towels. Defendant maintained plaintiff never filed a theft report at WCI complaining about stolen property. Defendant contended plaintiff failed to offer sufficient evidence to prove any of his property items were lost or stolen while under the control of WCI staff. In a grievance dated November 10, 2007 plaintiff claimed he did file a theft report in September 2007 regarding the loss of a tv antenna, a remote, a beard trimmer, and a fan.

{¶ 5} 5) Defendant also denied any of plaintiff's property was confiscated and destroyed while he was incarcerated at LeCI. Defendant submitted an inventory of plaintiff's property compiled at LeCI on November 5, 2007 incident to his transfer from WCI. The inventory does not list any of the property plaintiff claimed was subsequently confiscated and destroyed.

{¶ 6} 6) Plaintiff filed a response stating "he has, in his possession, the receipts and titles for the items, to wit: TV Antenna with match transformer \$11.00, Beard Trimmer \$23.00; Remote Control \$12.00; and Clear Fan \$23.00." These listed

items were among the property items plaintiff alleged were lost or stolen at WCI. Plaintiff further stated he has “receipts and titles for the items, to wit GE Super 3 Radio \$46.00; GPX CD Radio/Player \$57.00; Koss Headphones \$18.23, 2 sweatpants, 2 sweatshirts, and personal hygienic items.” Plaintiff alleged in his response these items were lost or stolen incident to a shakedown search at LeCI. Plaintiff insisted all items claimed were lost or stolen as a proximate cause of negligence on the part of defendant. Plaintiff explained he did indeed file a theft report with WCI staff but the report was never processed.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 5) Plaintiff’s failure to prove delivery of the claimed missing 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.

{¶ 12} 6) Plaintiff cannot recover for property when he fails to produce sufficient evidence to establish 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.

{¶ 13} 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 injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 14} 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.

{¶ 15} 9) 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*.

{¶ 16} 10) 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.

{¶ 17} 11) 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 plaintiff's statements unpersuasive concerning the ownership of all property claimed and the disposition of that property.

{¶ 18} 12) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property was lost, destroyed, or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 19} 13) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. Plaintiff has failed to show any of his property items were confiscated and destroyed while he has been incarcerated at LeCI.

{¶ 20} 14)Plaintiff has failed to show any 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; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

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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
6/17
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