

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

WILLIE CUNNINGHAM

Plaintiff

v.

NORTH CENTRAL CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-01255-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 3, 2008, plaintiff, Willie Cunningham, an inmate incarcerated at defendant, North Central Correctional Institution (NCCI), was transferred from the NCCI general population to a segregation unit. Incident to this transfer, plaintiff's personal property was inventoried, packed, and delivered into defendant's custody. Furthermore, multiple property items in plaintiff's possession were confiscated by NCCI staff and declared contraband. Plaintiff was issued a conduct report (February 4, 2008) for possession of contraband. Apparently plaintiff possessed property in excess of volume restriction policy set by defendant. Property that was inventoried and packed on February 3, 2008 was returned to plaintiff on February 6, 2008. All confiscated property items were not returned.

{¶ 2} 2) Plaintiff maintained that his typewriter which was among the packed items and stored in the NCCI property vault was never returned. Plaintiff implied that the typewriter was lost or stolen as a proximate cause of negligence on the part of NCCI staff in protecting property received on February 3, 2008. Plaintiff filed this complaint

seeking to recover \$149.45, the stated replacement cost of a typewriter. Payment of the filing fee was waived.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant acknowledged exercising control over plaintiff's typewriter on February 3, 2008. However, defendant asserted that the typewriter was returned to plaintiff's possession on February 6, 2008. Defendant submitted a copy of plaintiff's property inventory compiled on February 3, 2008. This inventory lists one typewriter and bears plaintiff's signature certifying its accuracy. The inventory also bears plaintiff's signature dated February 6, 2008 acknowledging his receipt of all property listed on the February 3, 2008 inventory including his typewriter. Defendant contended that plaintiff failed to produce any evidence that his typewriter was not returned.

{¶ 4} 4) Defendant submitted a copy of an "Inmate Property Theft Loss Report" (Theft/Loss Report) compiled by NCCI staff on March 18, 2008 after plaintiff reported his typewriter was missing almost seven weeks after he regained possession of his packed property.

{¶ 5} 5) Plaintiff filed a response insisting that his typewriter was not returned on February 6, 2008. Plaintiff suggested that the typewriter was confiscated as contraband despite the fact the typewriter was not listed among the confiscated items on the conduct report issued by NCCI staff. Plaintiff asserted that he was forced to sign his property inventory form while still housed in segregation and had no opportunity to inspect his property. Plaintiff submitted evidence establishing that he purchased a typewriter in September 2003 and he did not have a typewriter in his possession on March 11, 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) For plaintiff to prevail on claim of negligence, he must prove, by a

preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the 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. 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. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶ 9} 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.

{¶ 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.

{¶ 12} 7) Plaintiff has failed to prove, by a preponderance of the evidence, that 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.

{¶ 13} 8) Plaintiff has failed to show any causal connection between the loss of the typewriter and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-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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