

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

BOBBY KING

Plaintiff

v.

DEPT. OF REHAB. AND CORRECTIONS

Defendant

Case No. 2009-03312-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Bobby King, an inmate formerly incarcerated at defendant's North Central Correctional Institution ("NCCI"), related his locker box was broken into on August 1, 2008 and multiple food products along with items he purchased at the commissary were stolen. Plaintiff explained the thief was identified due to review of video surveillance tapes by NCCI staff. However, plaintiff pointed out his property was never recovered and the identified thief was not required to make restitution to him for the value of the stolen property.

{¶ 2} 2) Plaintiff filed this complaint contending defendant should bear responsibility for the loss of his stolen property due to defendant's refusal to order restitution payments be made to him by the identified inmate thief, Sandifer. Plaintiff seeks damages in the amount of \$177.00 for property loss. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim. Plaintiff argued defendant's Rules Infraction Board ("RIB"), who heard the charges against inmate Sandifer should have ordered him to make restitution for the value of the

stolen property.

{¶ 3} 3) Defendant acknowledged inmate Sandifer broke into plaintiff's locker box and stole property stored inside. Defendant denied breaching any duty of care owed to plaintiff in respect to property protection. Defendant argued any claims regarding dispositions by the RIB are not cognizable in this court.

{¶ 4} 4) Plaintiff filed a response asserting inmate Sandifer "was a multiple offender who had been repeatedly caught breaking into locker boxes and having stolen inmate property in his possession." Plaintiff implied defendant knew or should have known Sandifer was likely to break into locker boxes and consequently precautions should have been taken to protect inmate property in plaintiff's housing unit. Plaintiff claimed NCCI staff seized his property from Sandifer on or about August 8, 2008. There is no record to support this claim that plaintiff's property was seized by NCCI staff from Sandifer's possession. Evidence in the form of a "Grievance Appeal" document plaintiff filed with his complaint noted a search was conducted for plaintiff's stolen property but none of the items were recovered.

{¶ 5} 5) Plaintiff submitted an affidavit from a fellow inmate Mearl L. Putnam who was incarcerated at NCCI from February 14, 2001 to February 2, 2009 and had assigned housing on the same dormitory floor as plaintiff. Putnam recalled he was able to observe plaintiff's housing assignment area and related "[l]ocker boxes being broken into and ransacked for property was almost a daily occurrence with the inmates located in this area." Putnam further related, "[i]nmate Sandifer and several inmate thieves he operated in conjunction with (were) responsible for the majority of the thefts." Additionally, Putnam noted he "has personal knowledge of [i]nmate Sandifer breaking into and stealing property from three (3) inmate locker boxes just prior to breaking into the locker box of (plaintiff)." Putnam asserted NCCI staff knew about the locker box thefts and the identity of the thieves but made no attempts to inhibit or prevent the activity.

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) 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.

{¶ 11} 6) 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.

{¶ 12} 7) "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.

{¶ 13} 8) The fact defendant supplied plaintiff with a locker box to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 14} 9) The fact that a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1986), 84-02425. Plaintiff must show

defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 15} 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.

{¶ 16} 11) The Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined *** in accordance with the same rules of law applicable to suits between private parties ***’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institution security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 47.

{¶ 17} 12) Prison regulations, including those contained in the Ohio Administrative Code, “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, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Additionally, this 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 alleges NCCI staff failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 18} 13) It is well settled that this court does not have jurisdiction to review decisions made by the RIB. *Burton v. Lorain Corr. Inst.* (1996), 95-09612-AD; *Clark v. Ohio State Penitentiary*, Ct. of Cl. No. 2003-01466-AD, 2003-Ohio-2978.

{¶ 19} 14) Plaintiff failed to prove his stolen property was recovered and delivered into defendant’s custody and control. Plaintiff’s failure to prove delivery of the

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.

{¶ 20} 15) Plaintiff cannot recover for property loss 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.

{¶ 21} 16) Plaintiff has failed to prove, by a preponderance of the evidence, his items were stolen and unrecovered as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 22} 17) 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 court finds the assertions of Mearl L. Putnam are not particularly persuasive.

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

BOBBY KING

Plaintiff

v.

DEPT. OF REHAB. AND CORRECTIONS

Defendant

Case No. 2009-03312-AD

Deputy Clerk Daniel R. Borchert

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:

Robby King, #510-853
2500 S. Avon-Belden Road
Grafton, Ohio 44044

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

RDK/laa
7/27
Filed 9/2/09
Sent to S.C. reporter 1/5/10