

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

LYDIA BRONSTON ALLYSSA FAIRCHILD

Plaintiff

v.

MARION CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-04742-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 17, 2009, plaintiff, Lydia Bronston Allyssa Fairchild, an inmate incarcerated at defendant, Marion Correctional Institution (MCI), ordered a box of jelly doughnuts being sold as a fundraiser at MCI. Plaintiff authorized the withdrawal of funds from his inmate account to pay for the doughnuts. The “Personal A/C Withdrawal Check Out Slip” plaintiff signed authorizing the withdrawal from his inmate account bears the stamped notation “Non-Refundable.”

{¶ 2} 2) Plaintiff recalled the ordered doughnuts arrived at MCI in March 2009 and he was prohibited from receiving the ordered food products. Apparently, plaintiff was housed in a segregation unit at the time the doughnuts arrived at MCI and he was consequently denied receipt of the ordered items by MCI staff. Plaintiff asserted defendant had no authority to deprive him of the doughnuts he purchased and he has consequently filed this complaint seeking to recover \$6.50, the stated purchase price of the doughnuts, plus \$2,393.50 for “pain and suffering” and “mental anguish” attendant to property loss.

{¶ 3} 3) In a completely different matter, plaintiff claimed MCI personnel stole his jewelry box valued at \$55.00 and his cigarette case, valued at \$7.00. Plaintiff recalled the thefts were perpetrated on March 24, 2008 and alleged MCI staff members Hamilton and Young as the individuals who stole his property.

{¶ 4} 4) In another matter, plaintiff claimed his lock for his locker box was destroyed by defendant's employee during the course of a shakedown search on August 20, 2007. Plaintiff stated his lock was valued at \$6.50. Total damages in this claim amount to \$2,468.50. Payment of the filing fee was waived.

{¶ 5} 5) Defendant acknowledged plaintiff purchased doughnuts for a fundraiser and that plaintiff was housed in a segregation unit at the time the doughnuts were delivered. Defendant explained "[i]t is understood for fundraisers of this nature that the payment is non-refundable and that offenders in segregation would not receive doughnuts." Defendant pointed out the cash slip plaintiff signed to purchase the doughnuts bore the notation "non-refundable."

{¶ 6} 6) Defendant also acknowledged MCI personnel confiscated "1 mushfake box" from plaintiff's possession on March 11, 2008. Defendant suggested the confiscated box could represent either the jewelry box or cigarette case plaintiff claimed were stolen. Defendant contended the confiscated box constituted contraband and consequently plaintiff neither had a right to possess the contraband nor did he have a right to file an action for recovery of the value of the confiscated item. Defendant submitted a copy of a "Theft/Loss Report" plaintiff filed on April 3, 2008 regarding the alleged theft of a jewelry box on March 11, 2008. A prompt but fruitless search was conducted for the jewelry box.

{¶ 7} 7) Defendant argued plaintiff failed to offer any evidence to prove his lock was damaged by MCI staff.

{¶ 8} 8) Plaintiff filed a response insisting he is entitled to a refund for the purchase price of the doughnuts. Additionally, plaintiff claimed he wanted to mail his jewelry box from MCI to a designated outside address but was prevented from being allowed to mail the item. Plaintiff asserted defendant's personnel failed to issue him a "Conduct Report" when confiscating the items from his possession. Defendant submitted a copy of a "Conduct Report" dated March 11, 2008 that shows MCI staff confiscated, among other things, "1 mushfake box." The March 11, 2008 "Conduct

Report” bears plaintiff’s signature. Also, an “Inmate Contraband Slip” dated March 23, 2008 bears plaintiff’s signature but does not list any box. Plaintiff denied receiving a copy of the March 11, 2008 “Conduct Report” or the March 23, 2008 “Inmate Contraband Slip.” Plaintiff stated “things come up missing and stolen by the staff.” Furthermore, plaintiff reasserted his lock was destroyed by MCI personnel. Plaintiff related the lock was broken on August 24, 2007. Plaintiff filed an informal complaint alleging his lock was broken on August 20, 2007.

CONCLUSIONS OF LAW

{¶ 9} 1) Plaintiff’s claim for “pain and suffering” and “mental anguish” are denied. This court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056; *Waver v. Ohio Dept. of Corr.*, Ct. of Cl. No. 2006-02960-AD, 2006-Ohio-7250.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 4) Prison regulations “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, 479, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Connor* (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 that employees of defendant have failed to comply with internal regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 13} 5) Alternatively, considering defendant’s acts could be construed as a wrongful collection of plaintiff’s funds, plaintiff could still not prevail. Plaintiff is seeking

to recover funds he asserted were wrongfully withheld; the funds sought for recovery represent a claim for equitable relief and not money damages. Consequently, this court at the Administrative Determination level has no jurisdiction over claims grounded in equity based on the wrongful collection of funds from an inmate account. See *Flanagan v. Ohio Victims of Crime Fund*, Ct. of Cl. No. 2003-01893-AD, 2004-Ohio-1842; also *Blake v. Ohio Attorney General's Office*, Ct. of Cl. No. 2004-06089-AD, 2004-Ohio-5420; and *Johnson v. Trumbull Corr. Inst.*, Ct. of Cl. No. 2004-08375-AD, jud, 2005-Ohio-1241; *Norman v. Ohio Dept. of Rehab. and Corr.* (2008), 2007-09283-AD.

{¶ 14} 6) Plaintiff's claim is denied regarding the issue of a refund for the purchase price of the food. When plaintiff purchased the food he agreed to the terms and conditions of purchase which required his physical presence to accept delivery. Plaintiff's lack of knowledge of the conditions for delivery is irrelevant to the issue of liability. Plaintiff failed to satisfy the condition of the purchase and has consequently waived the right to any refund of payment or receipt of the products purchased. See *Bradsher v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2003-04627-AD, 2003-Ohio-4490; *Thomas v. Warren Correctional Inst.*, Ct. of Cl. No. 2005-07224-AD, 2005-Ohio-6586; *Price v. Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2006-01017-AD, 2006-Ohio-7158; *Conway v. Ohio State Penitentiary*, Ct. of Cl. No. 2008-07179-AD, 2009-Ohio-1979.

{¶ 15} 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, 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.

{¶ 16} 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), 88-0489-AD.

{¶ 17} 9) 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.

{¶ 18} 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* (1986), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 19} 11) 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.

{¶ 20} 12) Plaintiff has failed to prove, by a preponderance of the evidence, that any of his property was lost, damaged, or 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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