

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

ANTHONY PRYOR

Plaintiff

v.

ROSS CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-07779-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Anthony Pryor, an inmate incarcerated at defendant, Ross Correctional Institution (“RCI”), stated his “cd player, adapter, and surge protector” were stolen from his cell on May 28, 2007. Plaintiff explained he reported the theft to RCI staff and no responsive action was taken.

{¶ 2} 2) Plaintiff contended his property was stolen as a proximate cause of negligence on the part of RCI staff in failing to prevent known theft attempts. Plaintiff further contended defendant was negligent in failing to conduct a search for his CD player, adapter, and surge protector after being notified of the theft. Consequently, plaintiff filed this complaint seeking to recover \$250.00, the estimated replacement cost of his reported stolen property. Payment of the filing fee was waived. Plaintiff did not offer any evidence other than his own assertion to establish the claimed property items had a collective value of \$250.00.

{¶ 3} 3) Defendant acknowledged plaintiff’s property items were stolen from his cell by an inmate identified as Joshua S. Bennett #539-657. No items were ever

recovered from Bennett's possession since he claimed to have forwarded the stolen property to another unidentified inmate to settle a debt. Defendant denied any liability for any property loss plaintiff suffered. Defendant explained plaintiff's cellmate, Hampton, opened the cell door allowing inmate Bennett access to the cell and plaintiff's property stored inside. Defendant contended plaintiff failed to offer any evidence to prove his property loss was proximately caused by a breach of any duty of care owed to him by RCI staff. Defendant denied breaching any duty of care owed to plaintiff when RCI personnel failed to conduct a search for the stolen property after being informed of the theft. Defendant asserted there is no duty to search for indistinguishable property "such as a surge protector and adapter." Defendant pointed out RCI staff investigated the May 28, 2007 theft by "conducting interviews." Evidence in the form of an "Inmate Property Theft/Loss Report" records the theft was reported to RCI personnel on May 28, 2007 and investigated on May 29, 2007. According to this "Report" the theft investigation action taken involved questioning inmate Bennett and detaining him in isolation after he admitted to stealing plaintiff's property. Defendant's investigation found inmate Bennett gained access to plaintiff's cell when plaintiff's cellmate, Hampton opened the door. When the cell door was open, Bennett pushed Hampton back into the cell, stole plaintiff's property, and threatened Hampton with physical harm if he did not remain silent about the theft occurrence. Subsequently, Hampton identified Bennett as the individual who stole plaintiff's property.

{¶ 4} 4) Plaintiff filed a response contending defendant breached its duty to protect his property from theft based on the argument that RCI staff knew or had reason to know his property was subject to theft attempts. Plaintiff pointed out property was stolen from his cell on several occasions prior to May 28, 2007. Plaintiff asserted the prior thefts of his property constitutes conclusive evidence that defendant breached its duty of care to protect his property on May 28, 2007. Additionally, plaintiff asserted defendant breached its duty to protect his property by failing to conduct any search for the stolen items after being notified of the May 28, 2007 theft. Plaintiff maintained the failure to search is conclusive proof of negligence on the part of defendant. Plaintiff related defendant had authority under the Ohio Administrative Code to order inmate Bennett to provide restitution for the property he stolen. Plaintiff explained that due to his prison job either he or his cellmate in his absence were required to provide access

to his cell for other inmates to obtain cleaning materials stored in the cell. Therefore, plaintiff reasoned his cellmate was required to permit inmate Bennett access to the cell when he knocked at the door on May 28, 2007. Plaintiff denied either he or his cellmate's actions constituted negligence. Plaintiff did not provide any evidence to establish the value of his stolen property.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 5) 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. Indeed, the 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 asserts claims based upon alleged violations of internal rules and regulations, he fails to state a claim for relief.

{¶ 10} 6) The mere fact that a theft occurred is not enough to show defendant was negligent. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD;

Custom v. Southern Ohio Correctional Facility (1985), 84-02425.

{¶ 11} 7) Defendant is not responsible for theft 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.

{¶ 12} 8) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD.

{¶ 13} 9) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, the court held that defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. In the instant case, the surge protector and adapter were indistinguishable and, therefore, no duty to search arose.

{¶ 14} 10) Plaintiff has failed to prove, by a preponderance of the evidence, that defendant was negligent in respect to making any attempts to recover distinguishable stolen property, such as his adapter and surge protector. See *Williams v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2005-11094-AD, 2006-Ohio-7207.

{¶ 15} 11) "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.

{¶ 16} 12) Plaintiff has failed to prove, by a preponderance of the evidence, his surge protector and adapter 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.

{¶ 17} 13) Defendant's failure to search for plaintiff's CD player constituted a breach of defendant's duty to make reasonable attempts to recover stolen property. *Bellini v. Belmont Correctional Inst.*, Ct. of Cl. NO. 2003-02420-AD, 2003-Ohio-4915; *James v. Toledo Correctional Inst.*, Ct. of Cl. No. 2004-05589-AD, 2004-Ohio-5913.

{¶ 18} 14) Negligence on the part of defendant has been shown in respect to his CD player claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 19} 15) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31.

{¶ 20} 16) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

{¶ 21} 17) In a situation where damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original cost, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282, 518 N.E. 2d 46.

{¶ 22} 18) The court finds defendant liable to plaintiff in the amount of \$50.00.



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

ANTHONY PRYOR

Plaintiff

v.

ROSS CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-07779-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 plaintiff in the amount of \$50.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Anthony Pryor, #437-185
P.O. Box 7010
Chillicothe, Ohio 45601

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

RDK/laa
1/5
Filed 1/23/09
Sent to S.C. reporter 4/24/09