

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

MARTIN L. HOLLOMAN

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-10731-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Martin L. Holloman, an inmate incarcerated at defendant's London Correctional Institution ("LoCI"), maintained his personal property was destroyed by LoCI personnel during the course of a shakedown search of his living area on June 29, 2008. Plaintiff stated the damage to his property occurred after LoCI employee, Officer Laird, "while conducting the search of inmate Holloman's footlocker, wall locker, and bed area, deliberately took six family photographs, eight family letter(s), and fifty-one pages of trial transcript to pending litigation in United States District Court, and intentionally made one big pile on top of inmate Holloman's bunk with all of his other legal paperwork and personal hygiene products mixed in together." After the search of his living area was complete, plaintiff recalled he began examining the pile of property left on his bed and discovered his letters, photographs, and legal papers "were covered with black shoe polish."

{¶ 2} 2) Plaintiff contended his letters, photographs, and legal papers were destroyed as a proximate cause of negligence on the part of LoCI employee Officer

Laird in conducting the June 29, 2008 shakedown search. Plaintiff asserted Officer Laird failed to exercise reasonable care to protect his property during the search. Consequently, plaintiff filed this complaint seeking to recover \$2,500.00 in damages for the loss of six photographs, eight letters, and fifty-one pages of “trial transcript.” Payment of the \$25.00 filing fee was waived.

{¶ 3} 3) Defendant denied shoe polish was spilled on plaintiff’s property during the time his living area was subject to search. Defendant asserted plaintiff never “supplied evidence that his property was damaged as alleged.” Defendant further asserted plaintiff failed to produce sufficient evidence to prove his property was damaged as a proximate cause of negligence on the part of LoCI staff in handling his property. Additionally, defendant maintained plaintiff has grossly overstated his damage claim.

{¶ 4} 4) Plaintiff filed a response insisting he did offer conclusive proof the acts of Officer Laird caused the property damage claimed. Plaintiff referenced a “disposition of Grievance” dated July 28, 2008 that he filed with his complaint as proof that Officer Laird caused the damage claimed. After reviewing this “Disposition of Grievance” the trier of fact does not find any language in the document that would constitute an admission that Officer Laird caused damage to plaintiff’s property during a shakedown search. Plaintiff pointed out LoCI maintains camera surveillance of his living area and recorded video footage of the activities of June 29, 2008 would show evidence of the damage claimed and the cause of the damage. Plaintiff related he did in fact present his damaged property to Officer Laird immediately after the damage was discovered. Plaintiff argued the value of his damaged photographs, letters, and transcript pages amount to \$2,500.00.

CONCLUSIONS OF LAW

{¶ 5} 1) For plaintiff to prevail on a 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.

{¶ 6} 2) “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.

{¶ 7} 3) “If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone.” *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶ 8} 4) 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} 5) 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.

{¶ 10} 6) 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.

{¶ 11} 7) 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.

{¶ 12} 8) 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 issues 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.

{¶ 13} 9) 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 does not find plaintiff's assertions persuasive regarding the cause of damage to his property.

{¶ 14} 10) Plaintiff has failed to show any causal connection between any property damage 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:

Martin L. Holloman, #509-086
1580 State Route 56
P.O. Box 69
London, Ohio 43140

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

RDK/laa
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