

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

RICHARD LONERO

Plaintiff

v.

LEBANON CORR. INST.

Defendant

Case No. 2009-01719-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Richard Lonero, an inmate incarcerated at defendant, Lebanon Correctional Institution (LeCI), filed this complaint maintaining that LeCI personnel honored a forged \$100.00 cash withdrawal slip and consequently withdrew that amount from his inmate account. Plaintiff related that “two inmates, Giles, #525-240 and Freeman, #547-229 did forge a cash withdrawal slip in the amount of one hundred dollars (\$100.00) and forward the slip to the (LeCI) cashier’s (office) for deduction from the prison trust account for the plaintiff, to be sent to an approved visitor of inmate Freeman.” Plaintiff denied having any knowledge of the forgery, denied signing the forged instrument, and denied obtaining a witness signature from an LeCI employee. Apparently, the witness signature was also forged.

{¶ 2} 2) Consequently, plaintiff filed this action contending that he suffered damages as a result of defendant’s act in honoring a forged instrument. Plaintiff seeks recovery of damages in the amount of \$115.00; representing \$100.00 for the amount

improperly withdrawn and not replaced in his inmate trust account, \$5.00 for the cost of a “door tag” cell identification card stolen from his cell and used to complete the forgery (LeCI charged plaintiff \$5.00 for a replacement identification tag), and \$10.00 for postage and copying expenses incurred to prosecute this action. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Plaintiff submitted a copy of the forged withdrawal slip dated July 1, 2008. Under the signature line on the slip appears plaintiff’s name in hand printed letters “R. Lonero.” The slip also carries a witness line designated for the signature of an LeCI employee. The signature appearing on the witness line is illegible. The trier of fact finds that the forgeries are of poor and inferior quality.

{¶ 4} 4) Defendant acknowledged that “LeCI staff processed the cash slip without knowledge that it had been falsified and did not have (plaintiff’s) approval.” Defendant stated that the LeCI staff member, Officer J. Maggard who allegedly witnessed the cash slip “can not confirm nor deny that the witness signature was his,” despite the fact that he was working in plaintiff’s cellblock on July 1, 2008 and he presumably can recognize his own signature. Defendant further stated that Officer Maggard “did not recall witnessing the cash slip.”

{¶ 5} 5) Defendant denied any liability in this matter arguing that “[p]laintiff has failed to show that [d]efendant breached a duty to [p]laintiff and has failed to show that [d]efendant was the proximate cause of the loss of funds from his account.” Defendant admitted that plaintiff’s cellmate forged a cash slip in plaintiff’s name and “likely” forged the witness signature on the cash slip. Defendant admitted that LeCI staff honored the forgery. Defendant asserted that it should not be held liable for the

intentional act of an inmate, specifically the theft of \$100.00 from plaintiff's inmate account. Defendant observed that LeCI personnel were unaware that the cash slip was forged until a subsequent investigation was conducted.

{¶ 6} 6) Plaintiff filed a response contending that defendant breached its duty to make reasonable attempts to protect inmate property and to recover such property. Furthermore, plaintiff contended that defendant should bear liability based on its failure to provide adequate safeguards to protect inmate accounts from being preyed upon by forgers. Plaintiff essentially argued that defendant made no attempt to recover any of his funds from the two inmate forgers, Giles, who has since been released from LeCI, but is under the control of the Adult Parole Authority and Freeman, who remains incarcerated.

CONCLUSIONS OF LAW

{¶ 7} 1) Postage and copying costs are not considered compensable damages. *Carnail v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2007-06322-AD, 2008-Ohio-1207; *Tyler v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2007-07299-AD, 2008-Ohio-3418. Plaintiff may not recover those costs.

{¶ 8} 2) The mere fact a theft occurred is insufficient to show that 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 that defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 9} 3) Defendant is not responsible for actions of other 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.

{¶ 10} 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.

{¶ 11} 5) 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} 6) 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.

{¶ 13} 7) 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. In the instant claim, evidence supports the conclusion that defendant made no attempt to protect or recover the funds from plaintiff's account.

{¶ 14} 8) Defendant may bear liability for failure to properly monitor an inmate

plaintiff's account by either failing to record deposits or in making unauthorized withdrawals. See *Nelms v. Southeastern Corr. Inst.*, Ct. of Cl. No. 2007-01401-AD, 2007-Ohio-7087. Plaintiff, in the instant action, has submitted sufficient evidence to prove that defendant acted improperly in handling the funds in his inmate account. Plaintiff has also proven that defendant improperly charged him for a replacement ID.

{¶ 15} 9) Plaintiff has proven that he suffered all damages in the amount of \$105.00, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of \$130.00, which includes the filing fee. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

Richard Lonerio, #505-498

Gregory C. Trout, Chief Counsel

Case No. 2006-03532-AD

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MEMORANDUM DECISION

Case No. 2006-03532-AD

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MEMORANDUM DECISION

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RDK/laa
6/30
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