

# 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

THOMAS CARROLL

Plaintiff

v.

MADISON CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-02634-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Thomas Carroll, an inmate incarcerated at defendant, Madison Correctional Institution (“MaCI”), asserted his locker box was broken into on December 12, 2008, and several property items stored inside the locker were stolen. Plaintiff related the property items taken included multiple food products, envelopes, and two pairs of ear buds. Plaintiff recalled he immediately reported the theft to MaCI staff after he discovered items had been taken from his locker box. Plaintiff further recalled “that evening a theft report was written.” Neither plaintiff nor defendant submitted a copy of any theft report compiled on or about December 12, 2008. Plaintiff stated he subsequently requested MaCI personnel review taped camera footage of his housing unit for December 12, 2008, to attempt to identify the individual or individuals who had broken into his locker. Plaintiff maintained “2 inmates were taken to segregation as a result of ‘tape’ review.” Apparently plaintiff’s claimed stolen property items were never recovered. Plaintiff has contended his property was stolen and unrecovered as a proximate cause of negligence on the part of MaCI personnel in

failing to provide adequate security for his housing unit. Plaintiff filed this complaint seeking to recover damages in the amount of \$133.88 for property loss. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 2} 2) Defendant denied liability in this matter asserting plaintiff failed to offer sufficient evidence to establish his property was stolen as a result of negligence on the part of MaCI staff. Furthermore, defendant related plaintiff failed to follow internal policy mandated by the Ohio Administrative Code in pursuing his claim. Defendant explained plaintiff was required under administrative rule to first follow the grievance procedure in reference to property loss of less than \$300.00 before commencing any action in this court. Plaintiff did not file any “kites,” informal complaint, or formal grievance regarding his claimed property loss. Regardless of plaintiff’s failure to abide by internal rules in this matter, defendant argued plaintiff failed to establish MaCI staff breached any duty of care owed to him that resulted in any property loss.

#### CONCLUSIONS OF LAW

{¶ 3} 1) R.C. 2743.02(H) provides:

{¶ 4} “(H) If an inmate of a state correctional institution has a claim against the state for the loss of or damage to property and the amount claimed does not exceed three hundred dollars, before commencing an action against the state in the court of claims, the inmate shall file a claim for the loss or damage under the rules adopted by the director of rehabilitation and correction pursuant to this division. The inmate shall file the claim within the time allowed for commencement of a civil action under section 2743.16 of the Revised Code. If the state admits or compromises the claim, the director shall make payment from a fund designated by the director for that purpose. If the state denies the claim or does not compromise the claim at least sixty days prior to expiration of the time allowed for commencement of a civil action based upon the loss or damage under section 2743.16 of the Revised Code, the inmate may commence an action in the court of claims under this chapter to recover damages for the loss or damage.

{¶ 5} “The director of rehabilitation and correction shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this division.”

{¶ 6} Plaintiff did not follow defendant’s internal policy before commencing an action in this court. However, considering plaintiff did file “kites,” an informal complaint,

and a formal grievance regarding his purported December 12, 2008 property loss, any and all internal complaints would be denied as untimely filed. Therefore, in the interest of justice the court shall make a determination in this matter based on the merits.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) 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} 5) 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.

{¶ 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 allegation 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*.

{¶ 14} 9) 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.

{¶ 15} 10)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.

{¶ 16} 11)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.

{¶ 17} 12)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 all property claimed is indistinguishable in nature. Therefore, no search was required.

{¶ 18} 13)Plaintiff has failed to prove, by a preponderance of the evidence, his property 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.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
7/2  
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