

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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KEVIN HUGHLEY

Plaintiff

v.

SOUTHEASTERN CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-02057-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Kevin Hughley, an inmate incarcerated at defendant, Southeastern Correctional Institution (“SCI”), stated he was placed in the Intensive Program Prison (“IPP”) on March 11, 2008. During his participation in IPP, plaintiff received a “going home box” from his family. Plaintiff recalled the “going home box” contained a pair of shoes, a pair of jeans, a shirt, one pair of socks, a jacket, and a watch and was received at sometime between May 19 to May 27, 2008.

{¶ 2} 2) Plaintiff was subsequently removed from IPP for disciplinary reasons and the contents of his “going home box” were scheduled to be mailed out of the institution to a designated address. Plaintiff asserted the “going home box” was never mailed and was presumably lost while under the control of SCI staff. Consequently, plaintiff filed this complaint seeking to recover \$678.00, the stated replacement cost of one pair of shoes, one pair of socks, one pair of jeans, one shirt, one jacket, and one watch. Payment of the filing fee was waived.

{¶ 3} 3) Defendant pointed out plaintiff’s “going home box” was “returned to

sender on August 11, 2008.” Defendant submitted a copy of a “log book” page which carries the notation “send back” in reference to plaintiff’s “going home box.” The “log book” entry is dated August 11, 2008. Defendant argued plaintiff has failed to produce evidence to establish the “going home box” was not properly returned. Defendant denied the “going home box” was lost while under the control of SCI personnel.

{¶ 4} 4) Plaintiff filed a response insisting his “going home box” was never sent to his home address. Plaintiff recalled he never signed a cash slip to withdraw funds from his inmate account to pay for postage to mail the “going home box” from SCI. Plaintiff advised SCI policy mandates that if any problem arises with a “going home box” it will be returned back to the sender at the inmate’s expense. Defendant submitted a copy of a memorandum from SCI Chief of Security, Major A. E. Nichols, who wrote in references to “Going Home Clothes,” the following: “there will be no attire deemed as inappropriate allowed in, as the package will be also returned back to the sender at the inmate’s expense.” Plaintiff asserted no postage receipt exists to prove the “going home box” was mailed from SCI.

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) 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.

{¶ 7} 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.

{¶ 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) 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 8) Defendant is not responsible for property once it is shipped out of the facility. At that point, the property is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1989), 89-12968-AD; *Reynolds v. Lebanon Correctional Institution* (2001), 2001-03798-AD, jud.; *Frazier v. Mansfield Correctional Inst.* (2006), 2005-09375-AD, jud.

{¶ 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 particularly persuasive.

{¶ 14} 10) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property items were lost, discarded 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
8/4
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