

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

JOSEPH SAMBER, JR.

Plaintiff

v.

OHIO DEPT. OF REHABILITATION AND CORRECTION

Defendant

Case No. 2009-04599-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 21, 2009, employees of defendant, Department of Rehabilitation and Correction (DRC), conducted a shakedown search at the Trumbull Correctional Institution (TCI), a DRC facility. Plaintiff, Joseph Samber, Jr., an inmate incarcerated at TCI, stated that several items of his personal property were thrown away by DRC staff during the course of the shakedown search. Specifically, plaintiff asserted that six bags of food products and sixteen autographed photographs of current and former Pittsburgh Steelers players and coaches were discarded by DRC personnel.

{¶ 2} 2) Plaintiff contended that defendant had no right or authority to throw away his food products and photographs. Consequently, plaintiff filed this complaint seeking to recover \$8.78 for the loss of his food items and \$320.00, the stated value of sixteen autographed 5 X 7 photographs. Total damages claimed amounted to \$328.78. Payment of the \$25.00 filing fee was waived. Plaintiff submitted a receipt showing that he purchased food products from the TCI commissary on January 15, 2009. Plaintiff also submitted documentation showing that autographed 8 X 10 photographs of former

and current Pittsburgh Steelers are priced at over \$2,000.00.

{¶ 3} 3) Plaintiff submitted a written statement from fellow inmate, Grady Sutton, who recorded that he heard a DRC employee relating some Steeler photos were thrown away during the January 21, 2009 shakedown search. Sutton recalled that he subsequently discovered the photographs that were thrown away “came from cell 220 and were the property of Joe Samber.”

{¶ 4} 4) Plaintiff submitted a second written statement from fellow inmate, Raymond Mango, who noted that he was present near cell 220, a cell he shared with plaintiff, at the time of the shakedown search. Mango related that he was removed from the area shortly after the search began and when he returned to cell 220 with plaintiff after the search he “noticed several item(s) missing.”

{¶ 5} 5) Defendant acknowledged that the DRC employees involved in the shakedown search of plaintiff’s cell “took down and disposed of magazine cut outs which were on the cell wall.” Defendant asserted that the discarded magazine cut outs were “modified from their original form” and consequently, constituted impermissible contraband. Defendant specifically denied that any food products owned by plaintiff were thrown away. Defendant contended that plaintiff failed to offer any evidence to prove that DRC personnel acted improperly in discarding property during the January 21, 2009 shakedown search at TCI. Defendant maintained that plaintiff did not offer any evidence to prove the value of any photographs.

{¶ 6} 6) Plaintiff filed a response explaining that he should have been issued a conduct report for contraband possession if he pasted magazine cut outs on his cell wall. Plaintiff stated that he never received a conduct report. Plaintiff pointed out that his sixteen autographed photographs were stored in a photo album inside his locker box. Plaintiff did not offer any evidence to establish anyone purchased autographed photographs for him at a price of \$320.00.

CONCLUSIONS OF LAW

{¶ 7} 1) 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} 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.

{¶ 9} 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.

{¶ 10} 4) 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. In the instant action, the trier of fact finds that the statements of plaintiff are not particularly credible regarding his possessing sixteen 5 X 7 autographed photographs of former and current Pittsburgh Steelers coaches and players. The court finds that the discarded items consisted of impermissibly altered magazine cut outs.

{¶ 11} 5) An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 12} 6) An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is lost or destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD, jud, 2005-Ohio-4320; *Watson v. Ohio State Penitentiary*, Ct. of Cl. No. 2007-05229-AD, 2008-Ohio-2848.

{¶ 13} 7) Evidence has shown that plaintiff's magazine cut photographs were altered and consequently were considered impermissible. No recovery can be had for the loss or destruction of impermissible altered property. See *Kemp v. Ohio State Penitentiary*, Ct. of Cl. No. 2006-02587-AD, 2006-Ohio-7247.

{¶ 14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, that he sustained any loss as a result of any negligence on the part of 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.

MILES C. DURFEY
Clerk

Entry cc:

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8/18

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