

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

ALLEN QUINTANILLA

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00029-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Allen Quintanilla, filed this complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), alleging that during a transfer from defendant’s Lorain Correctional Institution (“LorCI”) to Mansfield Correctional Institution (“ManCI”) several items of his personal property were lost. Plaintiff informed the defendant that his property was still in the vault at Lorain Correctional prior to the transfer. After a few weeks of conversing with defendant’s agents, plaintiff’s property was transported from LCI to ManCI. “On 10-3-12 Plaintiff received the property that was left at LorCI and in the process of going through the Plaintiff’s property the Plaintiff had discovered that the following items were missing . . . Personal Pictures - \$102, Personal Pens - \$7.40, Personal Addresses - \$1.03, Personal Gym Shoes - \$18.50, 2 bowls w/lids - \$6.40.” Plaintiff seeks \$134.33 in damages for these lost items. Plaintiff was not required to submit the \$25.00 filing fee.

{¶2} Defendant filed an investigation report denying liability for plaintiff's lost property, as "Plaintiff fails to offer any evidence that satisfies his burden of proving that he suffered his loss as a result of Defendant's negligence. Plaintiff's complaint is devoid of any evidence that would afford a reasonable basis for the Court to conclude that Defendant's conduct was a factor in, or proximately caused the loss of Plaintiff's property. Plaintiff failed to supply pack up slips or any other documentation to support not only his allegation, but that Defendant was even in possession of the alleged missing property."

{¶3} Plaintiff filed a response to defendant's investigation report and included a copy of the Inmate Property Records from his transfer to LorCI and one from his transfer from LorCI to ManCI. Plaintiff argued that these forms prove that he was not present for the pack up and did not sign for his property when he arrived at ManCI.

CONCLUSIONS OF LAW

{¶4} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E. 2d 212 (1967), 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*, 176 Ohio St. 61, 197 N.E. 2d 548 (1964). The court finds plaintiff's assertions persuasive, especially considering the fact that he was not present for the pack up and he never signed for his property upon arrival. *Delong v. Department of Rehabilitation and Correction*, 88-06000-AD (1988).

{¶5} In order to prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that it 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.*, 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707 (1984).

{¶6} "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, 788 N.E. 2d 1121 (2nd Dist. 2003), citing *Miller v. Paulson*, 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521 (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265 (1989).

{¶7} 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, 76-0356-AD (1979).

{¶8} This court in *Mullett v. Department of Correction*, 76-0292-AD (1976), 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.

{¶9} 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*, 76-0368-AD (1977).

{¶10} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant’s conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶11} Defendant has a duty to use ordinary care in packing or storing property even if it is due to disciplinary confinement. *Gray v. Department of Rehabilitation and Correction*, 84-01577-AD jud (1985).

{¶12} If plaintiff’s property was lost due to defendant’s failure to use ordinary care in storing his property, then defendant would be liable. However, 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*.

{¶13} When prison authorities obtain possession of an inmate’s property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Department of Rehabilitation and Correction*, 85-01562-AD (1985); *Sallows v. Department of Correction*, 85-07773-AD (1986).

{¶14} By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Buhrow*; *Sallows*.

{¶15} If property is lost or stolen while in defendant’s possession, it is presumed, without evidence to the contrary, defendant failed to exercise ordinary care. *Merrick v. Department of Rehabilitation and Correction*, 85-05029-AD (1985); *Cox v. Southern Ohio Training Center*, 84-03740-AD (1986). Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst.*, Ct. of Cl. No. 2002-05751, 2005-Ohio-4455; obj. overruled, 2005-Ohio-5068. Plaintiff has demonstrated that the defendant took control of his property as documented by the

Inmate Property Record. This is also evidenced by the fact that defendant sent plaintiff's property to ManCI several weeks after he arrived.

{¶16} The standard measure of damages for personal property loss is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.*, 67 Ohio Misc. 2d 40, 644 N.E. 2d 750 (Ct. of Cl. 1994).

{¶17} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc. 2d 239, 577 N.E. 2d 160 (Ct. of Cl. 1988).

{¶18} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App. 3d 42, 495 N.E. 2d 462 (10th Dist. 1985). Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio*, 102 Ohio App. 3d 782, 658 N.E. 2d 31 (12th Dist. 1995). The plaintiff has provided no documentation of the value of these lost items. Even so, the court finds most of the values plaintiff assigned to the missing property to be reasonable. However, the plaintiff has failed to meet his burden of proof with respect to the loss of gym shoes. One pair of gym shoes appears on each Inmate Property Record, and plaintiff has provided no other form of evidence to prove ownership. As such, plaintiff's damages must be reduced by \$18.50. Also, in regard to the personal pictures, without proof of value, the court finds plaintiff's assigned value of \$102.00 to be unreasonable. The plaintiff is thereby awarded \$39.83.

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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 \$39.83. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Interim Clerk

Entry cc:

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DM/laa
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