

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

DARRYL BYRD

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00362-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Darryl Byrd, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting that he suffered injuries when his personal property was missing due to the negligence of a Corrections Officer, Officer Buckner, at defendant's Chillicothe Correctional Institution. Plaintiff submitted the filing fee with the complaint.

{¶2} Plaintiff asserted that on October 4, 2012, he “was taken to the institution captains office from the medical unit as a result of being out of place. The Captain Office and or the Count Office notified D-1, Block Officer Buckner that I had been placed in the hole. The required procedure then was for C/O Buckner to gather all of my property secure it where other inmates could not get to it in the C/O's restroom.” Plaintiff asserted that he later discovered that many of his personal items were missing, including items he had just purchased in the commissary that day. He contended that his items were either locked in his locker box or locked to his bed prior to his removal. He also claimed he was never issued an Intake Property Sheet and provided a “kite” response from Mr. Penrod, in the vault, which stated: “I have no pack up slip for you for that date!” Plaintiff alleged that

he had reason to believe that other inmates stole his property due to “C/O Buckner's negligence and inadequate supervision of the dorm and securing my property.”

{¶3} Plaintiff seeks \$266.48 to replace all of the stolen items. He provided an extensive, detailed list of his missing personal property. Plaintiff provided a receipt for all of the commissary purchases on October 4, 2012. This court has confirmed the quantity and price of each item that plaintiff claimed to be missing from that purchase, totaling \$165.49. The plaintiff also contended that he was missing an AC adapter 1 MP3 (\$16.05), an AC adapter (\$29.99), headphones (\$25.95), and a set of long johns (\$29.00). However, he provided no proof of purchase for these items or any other evidence indicative of possession.

{¶4} The plaintiff also provided the affidavits of four inmates who witnessed the incident and whose accounts support the plaintiff's allegation of negligence on behalf of C/O Buckner, specifically that they witnessed the officer leave the inmate's property unattended while other inmates, who allegedly stole his property, were supposed to be packing it up.

{¶5} Defendant submitted an investigation report and contended that it was not liable for any of plaintiff's losses. Defendant argued that plaintiff has failed to meet his burden of proving that the loss he suffered was proximately caused by defendant's negligence and denying liability for the actions of other inmates. Defendant averred that “[t]he fact that defendant supplied plaintiff with a locker box to secure his valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care.” Further, defendant argued that it cannot be liable because plaintiff signed his Inmate Property Record “upon his release from segregation, certifying the listed items were a complete and accurate inventory of his property.”

{¶6} Plaintiff filed a response to defendant's investigation report alleging that “this is far from an isolated incident by a pattern of gross Neglect and negligence supporting incompetence and bad faith.” Plaintiff discussed the internal policies of how

pack-ups and property transfers should be conducted, explaining how the standard operating procedures were not followed on the day of this incident. Plaintiff cited a newspaper article which purportedly shed light on a state-wide problem involving the lost property of inmates. Plaintiff also included affidavits of four inmates alleging similar violations of policy resulting in property loss.

CONCLUSIONS OF LAW

{¶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). 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).

{¶11} 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*.

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

{¶13} 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).

{¶14} In order to establish a prima facie case for violation of a bailment duty, the plaintiff must show that the bailment relationship existed, that the bailee had taken possession of his property, and the bailee failed to return the property. *The Deli Table, Inc. v. Great Lakes Mall*, 11th Dist. No. 95-L-012 (Dec. 31, 1996).

{¶15} When an inmate signs a receipt stating defendant packed all of his property and the inmate did not contest the fact of this receipt, he has failed to show ODRC was liable for the alleged property loss. *Yocum v. Chillicothe Correctional Institution*, 78-0142-AD (1978). The plaintiff is not automatically barred from recovery if the state produces a signed property receipt. As in this case, if the plaintiff contests the receipt, through the grievance process, or in his complaint to this court, that must be taken into consideration. The court finds it suspicious that the defendant was unable to produce a signed property receipt when plaintiff requested one shortly after the incident, claiming that none existed. Also, the court finds it unlikely that the plaintiff would sign this inventory list on the same day he purchased a substantial amount of items from the commissary and not notice that those items are missing from the list. For instance, there is not a single bag of chips listed on this inventory and plaintiff purchased 24 bags on the same date the list was created.

{¶16} 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*, 85-01546-AD (1985).

{¶17} “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, as to any essential issue in the case, he fails to sustain the burden as to such issue.” *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82, 118 N.E. 2d 147 (1954) sixth paragraph of the syllabus.

{¶18} The plaintiff has met his burden of proving by, a preponderance of the evidence, that it was the defendant’s conduct which proximately caused his property loss. However, his claim must be limited to the amount which can be substantiated based on the evidence before the court. Therefore, his claims regarding the long johns, AC adapter, 1 MP3 and headphones must be denied. The court is aware that these items are listed on the property list presented by the defendant. However, as previously discussed the factual accuracy of this list is in question and, therefore, the court cannot rely on its representations regarding plaintiff’s property. Based on the evidence presented, plaintiff has suffered damages in the amount of \$165.49 plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. 1990).

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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 \$190.49, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT

Case No. 2013-00362-AD

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MEMORANDUM DECISION

Interim Clerk

Entry cc:

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DRB/laa
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