

Court of Claims of Ohio

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MELVIN AGUILAR

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00599-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Melvin Aguilar, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), claiming his 15” Clear Tunes television was damaged while in possession and under control of defendant. Plaintiff asserted, on July 31, 2013, he went to medical for a knee injury. His belongings, including the television, were packed by one of defendant’s employees. He contended, on August 2, 2013, when he picked up his belongings, he “noticed obvious potential damage to the T.V. and requested it be plugged in to ensure it was in working order but it was not.”

{¶2} Plaintiff seeks \$247.00 to replace the damaged television. He was not required to pay the \$25.00 filing fee.

{¶3} Defendant filed an investigation report in which it denied liability for plaintiff’s losses based on the contention plaintiff has failed to prove defendant’s negligence caused the damage to the television. Defendant admitted the “screen was messed up,” when tested by the vault officer. However, “there is no allegation of physical damage to the television that would evidence something happened to the television while in the vault.” Defendant asserted, it is more likely plaintiff’s television was damaged prior to being

packed up by defendant. It based this assertion on plaintiff's "suspicious behavior upon collecting his property and immediately requesting that the television be tested."

{¶4} Plaintiff filed a response to defendant's investigation report in which he denied defendant's allegations that this is "simply an elaborate scheme by the plaintiff to replace or repair his already broken T.V." Plaintiff argued defendant offers inmates a T.V. repair service which costs \$4.00, if the T.V. failed prior to the pack up, he "would have simply availed himself to this service the moment the t.v. failed. . . This amount has been spent and more on preparation, mailing and copying of these pleadings." Plaintiff added, he "could obtain and submit affidavits from other inmates housed around or near him to attest to the fact his T.V. was working fine before it was packed up." Based on this assertion, on November 6, 2014, this court ordered plaintiff to produce evidence that his television was working prior to July 31, 2013. On December 2, 2014, plaintiff submitted the affidavits of two inmates who attested plaintiff's television was in good working order up to and including July 31, 2013.

CONCLUSIONS OF LAW

{¶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, 798 N.E.2d 1121, ¶41 (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 (1979).

{¶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 (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. Defendant does not dispute that it took possession of plaintiff's television.

{¶16} 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 version of the facts persuasive, especially in light of the corroborating evidence that the television was working moments before it was packed up by defendant. As such, judgment is hereby rendered in favor of plaintiff in the amount of \$247.00.

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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 \$247.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 6/12/15
Sent to S.C. Reporter 5/2/16