

Court of Claims of Ohio

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RICHARD GIBBS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00654-AD

Judge Patrick M. McGrath

ENTRY REVERSING ADMINISTRATIVE DETERMINATION

{¶1} This case came to be heard upon defendant's April 17, 2015 motion for court review of the clerk's determination pursuant to R.C. 2743.10(D). Upon review of the record, the court finds that there is substantial error in the clerk's determination. See C.C.R. 6(H)(6).

{¶2} On July 21, 2014, in his form complaint, plaintiff, an inmate in the London Correctional Institution, claimed that his television and electric fan were stolen by his bunkmate, Bonner, on December 30, 2013, due to defendant's negligence. The television and electric fan were secured to plaintiff's bed with cords. Plaintiff reported the theft to prison staff, who viewed video surveillance and determined that Bonner had cut the cords and stolen the property. Though prison staff conducted an investigation, ultimately, the property was never retrieved because Bonner had already disposed of it. Plaintiff utilized the prison's internal informal complaint resolution process and the inspector determined that the prison was not liable for the theft because prison staff was not negligent with regard to plaintiff's property. Plaintiff appealed the inspector's findings and the chief inspector agreed with the inspector's findings. As a result, plaintiff filed his complaint in this court.

{¶3} Defendant filed an investigation report in which it stated that plaintiff had failed to demonstrate that his loss was due to defendant's breach of any duty of care owed to

him. Defendant claimed that it investigated plaintiff's loss the same day the theft was discovered and identified that plaintiff's bunkmate had stolen the TV. Furthermore, defendant noted that plaintiff had not reported his fan as stolen in his original and subsequent internal complaints and, as a result, the loss of the fan was never investigated. With the investigation report, defendant attached a Rules Infraction Board (RIB) document noting that Bonner had been disciplined with both a commissary restriction and an order to pay for the lost TV; a cash slip signed by Bonner for \$215 which appears to constitute payment for a "stolen TV"; and a conduct report indicating that defendant had investigated plaintiff's claim the same day as it occurred.

{¶4} Plaintiff responded to defendant's investigation report and stated that his loss resulted from defendant's failure to "secure" and to "make security checks to protect" his property from theft. Additionally, plaintiff noted that defendant was negligent in allowing Bonner to be out of place. Plaintiff also stated that Bonner had agreed to pay for the stolen TV, which was evidenced by the cash slip attached to defendant's investigation report. Lastly, plaintiff asserted that defendant was negligent in not securing funds for the stolen television from Bonner.

{¶5} In his decision, the clerk found that based on the evidence presented, he could not determine whether defendant breached its duty of reasonable care owed to plaintiff's property because plaintiff had not shown when he had notified defendant of the theft ("[t]herefore, this court cannot make a determination on whether viewing the surveillance footage twelve hours after the incident was reasonable"). Memorandum Decision, ¶ 5. However, based on the cash slip signed by Bonner, the clerk held that "defendant was negligent in failing to secure the restitution funds from the other inmate" and rendered judgment in favor of plaintiff for \$230. *Id.* at ¶ 6, 9.

{¶6} In its motion, defendant stated that while the RIB had initially ordered Bonner to pay for the stolen television, it reversed its decision because defendant does not have legal authority to order the transfer of funds between inmates. To support this

contention, defendant cited to Ohio Admin. Code 5120-5-02 (D), which states “[f]unds in any amount from an unapproved source * * * shall not be accepted for deposit.” Ohio Admin. Code 5120-5-02(A)(1) includes inmates in its definition of “unapproved sources.” Additionally, defendant stated that it “does not have the legal authority to order the payment of funds between inmates – only courts of law have this authority.” Lastly, defendant stated that plaintiff should pursue his claim in a small claims court because defendant cannot act as one by ordering the payment of funds between inmates.

{¶7} In order to prevail in a claim for negligence, a “plaintiff must show (1) the existence of a duty, (2) a breach of duty, and (3) an injury proximately resulting therefrom.” *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 8. When prison authorities obtain possession of an inmate’s property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Dept. of Rehab. & Corr.*, Ct. of Claims No. 85-01562-AD (July 26, 1985). “A bailment is defined as a delivery of something * * * by one party to another, to be held according to the purpose or object of the delivery, and to be returned * * * when that purpose is accomplished.” 8 Ohio Jurisprudence 3d, 401, Bailments, Section 2 (1978). In order to establish a prima facie case for breach of a bailment duty, a plaintiff must prove: 1) a contract of bailment, 2) delivery of the bailed property to the defendant bailee, and 3) the bailee’s failure to return the bailed property. *David v. Lose*, 7 Ohio St.2d 97, 99 (1966).

{¶8} Here, plaintiff provided no evidence that his television was entrusted to defendant. Consequently, no bailment relationship existed and defendant did not owe a duty of care relative to plaintiff’s television. It follows that defendant could not have breached a duty of care when the property was stolen. In fact, from the evidence provided, the clerk correctly determined that he was unable to conclude that defendant had breached its duty of reasonable care owed to plaintiff.

{¶9} The clerk found that defendant was negligent in not securing funds from Bonner and delivering them to plaintiff. However, plaintiff’s loss in this case resulted

solely from the alleged theft for which defendant is not liable. The non-securement of funds cannot constitute a separate, independent act of negligence because defendant had no duty to secure and transfer the funds and any resultant harm is purely economic. Per the economic loss rule, a purely economic loss is not recoverable in tort. *Corporex Dev. & Constr. Mgmt. v. Shook, Inc.*, 106 Ohio St.3d 412, 2005-Ohio-5409, ¶ 6 (noting that a person who has only suffered an economic loss because of another's negligence does not suffer a legally cognizable or compensable injury). Neither plaintiff nor the clerk cite any authority to support why defendant would owe an independent duty to secure funds from Bonner nor why a purely economic loss could constitute a negligence claim.

{¶10} Additionally, while not originally attached to the investigation report, in its motion for court review, defendant notes that the RIB reversed its decision ordering Bonner to pay for plaintiff's stolen television. The Ohio Administrative Code supports this decision. It states that funds from an unapproved source may not be credited to an inmate's account and "[u]napproved source' means any person under the supervision of the department of rehabilitation and correction or any other correctional agency *unless approved by the managing director.*" OAC Ann. 5120-5-02 (emphasis added). There is no indication that the RIB, without the managing director's authorization, can order Bonner to pay plaintiff. While defendant states that "only courts of law" have the authority to order the payment of funds between inmates in its motion, it is clear that this court cannot do so because Bonner is not a party in this matter. See R.C. 2743.02 (E) ("The only defendant in original actions in the court of claims is the state."). In sum, the clerk erroneously categorized defendant's non-securement of funds from Bonner to plaintiff as a distinct negligence claim apart from any duty defendant owed with regard to the loss of the television.

{¶11} Accordingly, the administrative determination granting plaintiff's claim is REVERSED and judgment is rendered in favor of defendant. Pursuant to R.C. 2743.10(D), no further appeal may be taken from this judgment. Court costs shall be

absorbed by the court.

PATRICK M. MCGRATH
Judge

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