

Court of Claims of Ohio

The Ohio Judicial Center
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TYRONE CARD

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00766-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Tyrone Card, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted on October 19, 2013, he was sent to segregation. He contended that he was wearing his Black Nike Overplay tennis shoes at the time he was placed in segregation. He stated he was directed to place his tennis shoes in a brown paper bag, which he did. Upon his release from segregation, the brown bag and his tennis shoes were missing. Due to this fact he refused to sign the property receipt form on October 23, 2013, when he was released from segregation.

{¶2} Plaintiff presented documentation that he purchased and subsequently received the Nike shoes nine days before he was sent to segregation. Plaintiff submitted a copy of a Disposition of Grievance dated December 12, 2013, which in pertinent part states:

- a) “I reviewed the Shift Roster and on 10/19/13 Officer Hutchinson, Anderson and Harlow worked J2. These staff members were interviewed and stated what you were wearing on 10/19/13 entering J2 was placed in a brown bag and sent to the property vault.”

{¶3} The Disposition of Grievance was signed by Linnea Mahlman. Plaintiff seeks

damages in the amount of \$75.00, of which \$51.00 represents the cost of the tennis shoes, \$4.00 for a processing fee, \$3.99 for sales tax, and \$16.00 for “pain, suffering & inconvenience/hardship.” Plaintiff was not required to pay the filing fee.

{¶4} Defendant filed an investigation report, denying liability in this matter. ODRC contended that a pack up slip prepared at the time plaintiff entered segregation indicated that plaintiff possessed three pairs of shoes, the maximum allowable. However, none of the shoes were the Nike tennis shoes in question. Accordingly, defendant denies ever possessing these shoes and, consequently, believes no judgment should be granted in plaintiff’s favor. Finally, ODRC asserted plaintiff may not receive money for pain and suffering based on his property loss. However, defendant does not address the fact that the shoes that plaintiff wore to segregation were placed in a brown paper bag as attested by Officers Hutchinson, Anderson, and Harlow.

{¶5} Plaintiff submitted a response to defendant’s investigation report, wherein he reiterated his contention that his Nike tennis shoes were lost while in defendant’s possession.

CONCLUSIONS OF LAW

{¶6} In order to prevail, in a claim of 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).

{¶7} “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.), 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).

{¶8} 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)

{¶9} 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.

{¶10} 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).

{¶11} 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).

{¶12} 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).

{¶13} 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). This court is persuaded by plaintiff's testimony that he possessed Nike tennis shoes when he was escorted to segregation. Plaintiff's account of the incident was bolstered by the recollection of three correctional officers who accompanied him to segregation.

{¶14} 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*.

{¶15} 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).

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

{¶17} 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). However, plaintiff's failure to prove delivery of the property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation*

and Correction, 86-02821-AD (1987). 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 provided sufficient evidence to prove, by a preponderance of the evidence, that he possessed Nike tennis shoes, these shoes were placed in a brown paper bag, and upon release from segregation the tennis shoes could not be located.

{¶18} This court does not recognize entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction*, V78-0731-AD (1979); *Berke v. Ohio Dept. of Pub. Welfare*, 52 Ohio App. 2d 271, 369 N.E.2d 1056 (10th Dist. 1978).

{¶19} Based upon the evidence presented, plaintiff has suffered damages in the amount of \$54.99.

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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 \$54.99. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 1/21/15
Sent to S.C. Reporter 5/2/16