[Cite as *Wells v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5699.]

Court of Claims of Ohio
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JOHN E. WELLS, SR.

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00796-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, John E. Wells, Sr., an inmate, filed a complaint against defendant Ohio Department of Rehabilitation and Correction ("ODRC") asserting that on October 5, 2012, he was moved from J-Block to 5-dorm. Plaintiff related that he placed his "most valuable property into my lockerbox and locked it before going to work in the chapel." Upon his return from his work assignment he immediately noticed "that my lock had been peeled open, and my new Timberland Boots, Nike shoes, and commissary items purchased that morning had been stolen."

{¶2} Plaintiff contended he immediately informed the officer in charge about the theft. However, a search was only conducted of his bed area, but the dorm was not searched. Plaintiff noted "I put my name and number in large black letters and numbers on the 'tongue' of the boots and shoes so covering it would have been very obvious."

{¶3} Initially, plaintiff contended that defendant's agent must not have been doing his assigned rounds, since plaintiff contends "it would have taken a very long time for someone to peel the rim on the back (of the lock) to open it as was done." Second, defendant did not conduct a search of the dorm area to locate his shoes which were

clearly marked with this name and number. Finally, plaintiff asserted he should never have been placed in 5-dorm in the first place. Plaintiff contended he was taking the place of "another older white guy with physical limitations who was being robbed because he was viewed as weak and defenseless." Plaintiff believes he fits this description also, so he contended defendant placed him in a situation, where, but for his placement in 5-dorm, his property would not have been stolen.

{¶4} Plaintiff seeks damages in the amount of $131.36, of which $80.00 represents the cost of his Timberland boots, $51.36, the costs of his Nike shoes, and $10.00 the approximate value of his commissary items. Plaintiff was not required to submit the $25.00 filing fee.

{¶5} Defendant submitted an investigation report denying liability in this matter. Defendant asserted that plaintiff delayed reporting the theft of his property until August 18, 2014, although plaintiff asserted in his complaint that the theft occurred on October 5, 2012. Due to this delay, plaintiff own actions caused the investigation of this theft to become "nearly impossible." Furthermore, defendant disputes plaintiff's allegation that its C.O. didn't make timely rounds. Defendant asserted "historic records (reveal) that rounds were properly conducted during the date and time of the alleged theft." Finally, defendant contended that a search for plaintiff's property was conducted, but plaintiff's property could not be located.

{¶6} Plaintiff filed a response to defendant's investigation report, wherein he admitted that he filed his grievance less than 9 days prior to the expiration of the statute of limitations, but contended the delay was the fault of defendant. Plaintiff asserted that he filed a number of kites to the Institutional Inspector's Office requesting a grievance form, but the Office, for a variety of reasons did not provide him with the requested form. Plaintiff alleged, "the Inspector waiver the 90 days issue because it was due to a misunderstanding that was not Plaintiff's fault."

{¶7} Plaintiff reiterated his argument that defendant placed him in a situation to be

victimized, since he replaced another inmate, who was also white, physically disabled, and older than the age range of the purported victimizers, 18-25 years old.

{¶8} Again, plaintiff contended but for this move the theft of his property would not have occurred.

{¶9} Plaintiff argued that the search for his missing property was cursory at best because only his bed area was searched. Plaintiff asserted "the entire housing area, in which the theft is reported" should have been searched. Plaintiff conceded that commissary items would have been difficult to identify as plaintiffs, therefore he withdrew his claim.

{¶10} Defendant filed a motion to supplement the investigation report. When defendant submitted the investigation report it was stated a Report of Inspector of Institutional Services, Marion Correctional Institution was attached. However, it was not. Accordingly, defendant submitted the report with this motion. Defendant's motion is GRANTED.

{¶11} Plaintiff filed a motion to supplement his response based on defendant's filing. Plaintiff's motion is GRANTED. Plaintiff reiterates his allegations that C.O.'s do not timely make rounds and this was a contributing factor to the theft of his property. Finally, plaintiff asserted that defendant did not conduct a search for his stolen boots and shoes.

CONCLUSIONS OF LAW

{¶12} Defendant cannot be sued for making management and policy decisions which are characterized by the exercise of a high degree of official judgment or discretion. *Reynolds v. State*, 14 Ohio St.3d 68, 70, 471 N.E.2d 776 (1984).

{¶13} "When dealing with the day-to-day operations of the prison, prison officials must be given a 'wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 60 L. Ed. 2d 477, 99 S.

Ct. 1861 (1979). See also, *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119, 53 L. Ed. 2d 629, 97 S. Ct. 2532 (1977), *Procunier v. Martinez*, 416 U.S. 396, 40 L. Ed. 2d 224, 94 S. Ct. 1800 (1974).

{¶14} Finally, this court does not act as a court of appeals for internal decision rendered by ODRC relating to housing assignments. See *Chatman v. Dept. of Rehabilitation and Correction*, 84-06323-AD (1985); *Ryan v. Chillicothe Institution*, 81-05181-AD; *Rierson v. Department of Rehabilitation*, 80-00860-AD (1981). Accordingly, this court will not consider plaintiff's claim regarding his assignment to 5-dorm.

{¶15} 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).

{¶16} "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).

{¶17} 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).

{¶18} 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.

{¶19} 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).

{¶20} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that 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).

{¶21} The allegation that a theft may have occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility*, 83-07091-AD (1985); *Custom v. Southern Ohio Correctional Facility*, 76-0356-AD (1979).

{¶22} Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility*, 78-0217-AD (1978). Plaintiff has presented no evidence that defendant was aware of the risk his new dorm assignment posed to the plaintiff.

{¶23} Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility*, 79-0132-AD (1981); *Russell v. Warren Correctional Inst.*, 98-03305-AD (1999).

{¶24} 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).

{¶25} This court finds plaintiff's statements persuasive that he notified defendant's agents of the theft of his boots and shoes, and the only search conducted was of his bed area. Defendant does not dispute plaintiff's contention that a more comprehensive search was not conducted. Accordingly, I find defendant responsible for the loss of plaintiff's boots and shoes, since a meaningful search was not conducted.

{¶26} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris*, 25 Ohio App. 3d 42, 495 N.E.2d 462 (10th Dist. 1985).

{¶27} 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).

{¶28} 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).

{¶29} In a situation where damage assessment for personal property destruction or loss based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such facts as value to the owner, original cost, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney*, 34 Ohio App.3d 282, 518 N.E.2d 46 (12th Dist. 1986).

{¶30} Where the existent of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers*, 82 Ohio App.3d 148, 611 N.E.2d 492 (12th Dist. 1992). Only 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). A review of plaintiff's complaint revealed he purchased the boots and shoes on September 23, 2011. At the time of the theft these items were over a year old. Accordingly, I find judgment should be awarded in favor of the plaintiff in the amount of $100.00.

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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 $100.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 5/4/15
Sent to S.C. Reporter 5/2/16