

Court of Claims of Ohio

The Ohio Judicial Center
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DAVID BAIN

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00904-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, David Bain, an inmate, filed a complaint against Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted on June 24, and June 30, 2014, while housed at defendant’s Chillicothe Correctional Institution (“CCI”), he had property items stolen from him.

{¶2} Plaintiff contended these thefts were facilitated by the lack of staffing at CCI. Plaintiff alleged the thefts were committed when one of the two guards assigned to the E-2 dormitory was required to go to the Inmate Dining area during lunch time for extra security. Plaintiff believed this allowed the theft of his property to occur due to the lack of security.

{¶3} Plaintiff asserted he followed ODRC procedures but to no avail seeking return of his property. Plaintiff argued that ODRC was in violation of the administrative code due to lack of security which encouraged inmate-on-inmate thefts.

{¶4} Plaintiff submitted an Inmate Property Record-Disposition and Receipt-MALE dated May 27, 2014, evidencing he was in possession of boots. Plaintiff also submitted commissary receipts from CCI dated June 2, and June 16, 2014, revealing the

commissary items he purchased at that time.

{¶5} Plaintiff listed the following property items and their values which were stolen allegedly either on June 24, or June 30, 2014: 48 soup, \$12.48; two cookies, \$2.36; four tea, \$4.48; two pickles, \$1.34; peanut butter, \$2.04; 24 pastries, \$15.60; nachos, \$1.60; a bowl, \$3.74; drink bottle, \$3.56; BBQ sauce, \$1.64; coffee mug, \$2.71; pizza sauce, \$1.77; squeeze cheese, \$2.50; honey, \$3.09; laundry soap, \$2.38; and a pair of Timberland boots, \$84.00.

{¶6} Plaintiff seeks total damages in the amount of \$145.29. Plaintiff submitted the \$25.00 filing fee.

{¶7} Defendant submitted an investigation report denying liability. Defendant asserted plaintiff has failed to prove a causal connection between the theft of his property and any negligence on the part of defendant's agents. Furthermore, ODRC argued that it had no duty to search for undistinguishable commissary items. Finally, all staffing decisions fall under the discretionary immunity of ODRC, for which it cannot be sued. Defendant failed to address whether or not a search was conducted to recover plaintiff's Timberland boots, distinguishable property.

{¶8} Plaintiff submitted a response to defendant's investigation report. Plaintiff again reiterated his argument that the lack of security caused the theft of his property and it was ill advised to transfer a guard from E-2 dormitory to the dining hall during lunch time. Accordingly, plaintiff requests judgment be granted in his favor.

CONCLUSIONS OF LAW

{¶9} 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).

{¶10} "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, 99 S. Ct. 1861, 60 L. Ed. 2d 477 (1979). See also, *Jones v. North Carolina Prisoners’ Labor Union*, 433 U.S. 119, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977), *Procunier v. Martinez*, 416 U.S. 396, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974).

{¶11} Finally, this court does not act as a court of appeals for internal decision rendered by ODRC relating to staffing assignments. See *Chatman v. Dept. of Rehabilitation and Correction*, 8406323-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 staffing at lunch time in the 5-dorm.

{¶12} 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 cause his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶8 citing *Meniffee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶13} “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).

{¶14} 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).

{¶15} 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.

{¶16} 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).

{¶17} 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).

{¶18} 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).

{¶19} 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).

{¶20} 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).

{¶21} However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction*, 85-03638-AD (1985), the court held that defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. This court finds that the only item of property which was distinguishable was his boots.

{¶22} 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 does find plaintiff's version of the facts particularly persuasive with respect to the theft of, and failure to search for his boots.

{¶23} 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).

{¶24} 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).

{¶25} 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).

{¶26} 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).

{¶27} 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 over two years ago, and had worn them approximately 20 times. Accordingly, I find judgment should be awarded in favor of plaintiff in the amount of \$45.00 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 90 (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 \$70.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk