

[Cite as *Antenori v. Ohio Dept. of Rehab. & Corr.*, 2016-Ohio-2802.]

LOUIS ANTENORI

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2015-00651-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Louis Antenori, an inmate, filed a complaint against defendant, Department of Rehabilitation and Correction (“DRC”), asserting on March 15, 2014, he left his dorm to attend a visit from 9:00 am to 2:30 pm. Upon his return he noted his property was missing. Plaintiff asserted that defendant’s guard failed to protect his property in his absence and therefore should be responsible for his lost property. Furthermore, plaintiff contends a search was not conducted for his lost property.

{¶2} Plaintiff seeks damages in the amount of \$282.82, for the loss of the following property: Sony Disc Player, Norelco Beard and Mustache trimmer, two pairs of sweat pants and shirts, television cable cord, cable splitter, Koss earbuds, pair of Riddell tennis shoes, four trays of cookies, two bags of O’Keefe coffee, one package of one hundred pack box of sugar, box of sugar, and combination lock. Plaintiff was not required to submit the \$25.00 filing fee.

{¶3} Plaintiff submitted a letter requesting he be granted a default judgment based on defendant’s failure to timely submit the investigation report. Plaintiff also submitted an Inmate Property Record dated August 23, 2013, which indicated plaintiff was in possession of a Sony disc player, Norelco trimmer, two pairs of sweat shirts and pants, head phones, ear buds, tennis shoes, but food items and the combination lock were not listed.

{¶4} Plaintiff also provided a copy of titles for Koss headphones and Sony disc player.

{¶5} This court issued an entry on October 29, 2015, ordering defendant to file the investigation report within 14 days. The investigation report was filed on November 5, 2015, within the time given to defendant. Accordingly, plaintiff's letter requesting default judgment is moot.

{¶6} Defendant submitted an investigation report denying liability. Defendant acknowledged plaintiff's locker box was stolen while he was on a visit. However, defendant conducted a search, reviewed video surveillance footage, and the officer in charge conducted security rounds every ½ hour as required. Defendant contends it fulfilled its duty of care with respect to plaintiff's property and cannot be responsible for thefts committed by other inmates.

{¶7} On December 14, 2015, plaintiff submitted a motion for extension of time to submit a response to defendant's investigation report. However, on December 24, 2015, plaintiff submitted a response. Accordingly, plaintiff's motion for extension of time is moot.

{¶8} Plaintiff contended he is a ward of the state and DRC has the duty to protect his property. He believes DRC is an insurer of his property. Plaintiff further believes since surveillance video is available, defendant should have the responsibility to view the video and find who was responsible for the theft of his property.

CONCLUSIONS OF LAW

{¶9} 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).

{¶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 (1977).

{¶11} 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.

{¶12} 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).

{¶13} 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).

{¶14} “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).

{¶15} 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). Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶16} 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). However, in the instant claim, plaintiff has failed to prove defendant was negligent or that officers failed to perform security rounds in the housing unit. Therefore, no liability shall attach to defendant as a result of any theft based on this contention.

{¶17} The fact that defendant supplied plaintiff with a locker box to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction*, 86-02635-AD (1987).

{¶18} 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). In the case at bar, once notified of the theft, defendant conducted a search and viewed video surveillance footage.

{¶19} 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. In the instant case, some of the alleged stolen property was indistinguishable and, therefore, no duty to search arose. See also *Thomas v. Warren Correctional Inst.*, 2005-07224-AD jud, 2005-Ohio-6586.

{¶20} Plaintiff has failed to prove, by a preponderance of the evidence, that defendant was negligent in respect to making any attempts to recover distinguishable or indistinguishable stolen property. See *Williams v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2005-11094-AD, 2006-Ohio-7207.

{¶21} Plaintiff has failed to prove, by a preponderance of the evidence, that he sustained any loss as the result of negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction*, 97-10146-AD (1998); *Hall v. London Correctional Inst.*, Ct. of Cl. No. 2008-04803-AD, 2008-Ohio-7088.

{¶22} In addition, prison regulations, include those contained in the Ohio Administrative Code, "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, 1997-Ohio-139, 683 N.E.2d 1139, citing *Sandlin v. Conner*, 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed.2d 418 (1995). Additionally,

this court has held that “even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence.” *Williams v. Ohio Dept. of Rehab. and Corr.*, 67 Ohio Misc.2d 1, 3, 643 N.E.2d 1182 (10th Dist. 1993). Accordingly, to the extent that plaintiff alleges that LoCI staff somehow violated internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief. See *Sharp v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2008-02410-AD, 2008-Ohio-7064, ¶5. Consequently, plaintiff’s claim is denied.

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v.

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DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk