

[Cite as *Skiles v. Dept. of Rehab. & Corr.*, 2019-Ohio-1911.]

GREGORY L. SKILES

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2018-01163AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Gregory L. Skiles, an inmate, filed a complaint against defendant, Department of Rehabilitation and Correction (“DRC”). Plaintiff related on June 29, 2017, while he was housed at defendant’s Lebanon Correctional Institution (“LeCI”), his property was stolen by another inmate. Plaintiff contends that an inmate entered plaintiff’s cell when plaintiff was at recreation and stole his property. Plaintiff lists the following property as missing: A 15” Clear Tunes television, Nike Kawa Slide sandals, Memorex Analog AM/FM radio, a prayer rug, Andis shaver, Timberland Pro Attach boots, Navy blue blanket, and Puma Tazon running shoes.

{¶2} Plaintiff seeks damages in the amount of \$466.74. Plaintiff submitted the \$25.00 filing fee with the complaint.

{¶3} Defendant submitted an investigation report admitting liability as it related to the 15” Clear Tunes television and the Timberland Boots. Defendant denied liability for the remaining property plaintiff alleged was missing. Defendant contended that plaintiff signed an Inmate Property Record indicating that all of his property was accounted for when plaintiff was packed up to be transferred to security control for assaulting another inmate. Defendant admits that when plaintiff’s property was returned to him on February 20, 2018, he claimed the loss of a television and other property.

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{¶4} Defendant admits that plaintiff's Timberland boots were confiscated as evidence of a criminal act. Defendant admits that the boots were not returned to plaintiff once the criminal investigation was complete. Defendant acknowledges that the television was purchased by plaintiff for \$221.95 and the Timberland boots were purchased for \$80.00.

{¶5} Defendant denies liability as to the other property items plaintiff alleges were lost. Defendant attached copy of an Inmate Property Record dated June 30, 2017 which appears to contain plaintiff's signature. Plaintiff's signature appeared directly below a statement reading "I certify that the above listed items are a complete and accurate inventory of all my personal property." The Inmate Property Record does not list any of the items listed on plaintiff's complaint except for the shaver.

{¶6} Defendant contends that plaintiff has failed to prove defendant was responsible for the loss of plaintiff's property other than the television and boots.

{¶7} Plaintiff filed a response to defendant's investigation report. Plaintiff talks about an unrelated disciplinary action taken against him by the Rules Infraction Board ("RIB"). Furthermore, plaintiff states the majority of plaintiff's missing property was found in another inmate's cell. An RIB hearing was held with respect to this inmate and it was determined the inmate did not steal plaintiff's property but rather plaintiff gave this inmate his property. Accordingly, the remainder of his property was declared contraband.

CONCLUSIONS OF LAW

{¶8} In order to prevail, in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his damages. *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).

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{¶9} “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).

{¶10} 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).

{¶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 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).

{¶13} 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).

{¶14} 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).

{¶15} In order to establish a prima facie case for violation of a bailment duty, the plaintiff must show that the bailment relationship existed, that the bailee had taken possession of his property, and the bailee failed to return the property. *The Deli Table, Inc. v. Great Lakes Mall*, 11th Dist. No. 95-L-012 (Dec. 31, 1996).

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{¶16} When an inmate signs a receipt stating defendant packed up all of his property and the inmate did not contest the fact of this receipt, he has failed to show the Department of Corrections was liable for the alleged property loss. *Yocum v. Chillicothe Correctional Institution*, 78-0142-AD (1978). Here, plaintiff signed an Inmate Property Record on June 30, 2017, and this record, as noted, indicates plaintiff did not contest the receipt of his property. Further, none of the items plaintiff listed in the complaint appear on plaintiff's property record except for the shaver. Plaintiff has failed to produce any evidence contrary to the property record which indicates the shaver was present at pack up. Further, it appears that plaintiff indicated at pack up that all his property was accounted for.

{¶17} Insofar as plaintiff alleges that defendant violated its own internal rules or policies, there is no cause of action for a violation of internal rules or policies. *Peters v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-1048, 2015-Ohio-2668, ¶ 10. Indeed, internal prison regulations "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, 683 N.E.2d 1139 (1997). "Thus, those violations will not support a cause of action by themselves, even though violations of internal rules and policies may be used to support a claim of negligence." *Triplett v. Warren Corr. Inst.*, 10th Dist. No. 12AP-728, 2013-Ohio-2743, ¶ 10.

{¶18} Plaintiff's grievance forms indicate he reported the loss of a television and boots. Defendant has admitted liability as it relates to the television and boots. Therefore, the court finds that defendant is liable for the loss of plaintiff's television and Timberland boots only. Plaintiff has failed to provide sufficient evidence to prove defendant is liable for the loss of the other items listed in plaintiff's complaint. Furthermore, the RIB determined the remainder of plaintiff's property was contraband.

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{¶19} Plaintiff has no right to possess contraband property and defendant is not responsible for loss or damage to contraband property. *Beaverson v. Department of Rehabilitation and Correction*, 84-09071 (1984)

{¶20} The Court of Claims does not have jurisdiction over decisions of the Rule Infraction Board. *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).

{¶21} 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). 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).

{¶22} The court notes that plaintiff's television was purchased for \$221.95 in March of 2017 and was stolen on June 29, 2017. Thus, the court finds that the television was less than a year old when it was stolen. The court awards plaintiff \$221.95 for the television. Plaintiff purchased the Timberland boots in March of 2017 for \$80.00. The court awards plaintiff \$80.00 for the loss of the boots.

{¶23} Therefore, judgment is rendered in favor of plaintiff in the amount of \$301.95, plus \$25.00 for reimbursement of the filing fee pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc.2d 19, 587 N.E.2d 990 (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 \$326.95, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 3/27/19
Sent to S.C. Reporter 5/17/19