

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ANTOINE LOGAN

Plaintiff

v.

TRUMBULL CORRECTION INSTITUTION

Defendant

Case No. 2008-11354-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Antoine Logan, an inmate formerly incarcerated at defendant, Trumbull Correctional Institution (TCI), stated that his locker box was broken into and several property items stored inside were stolen. Plaintiff pointed out that his locker box was secured inside his cell at TCI. Plaintiff recalled that the theft incident occurred on August 19, 2008, at approximately 1:35 p.m.

{¶ 2} 2) Plaintiff claimed that he reported the theft of his property that same day to TCI staff, but no action was taken to recover any stolen items. Plaintiff maintained that TCI personnel subsequently conducted a shakedown search throughout the institution on August 27, 2008 and multiple property items were confiscated incident to this search. Plaintiff related that defendant did not abide by his request to cross reference the confiscated property items with any items he reported stolen to determine if any of the confiscated items actually belonged to him. Plaintiff filed this complaint seeking to recover \$259.43, the estimated replacement value of the property allegedly stolen from his locker box on August 19, 2008. Plaintiff contended that defendant acted

negligently in failing to make reasonable attempts to recover his property after it was reported stolen and a subsequent shakedown search resulted in the confiscation of multiple property items. Plaintiff noted that his alleged stolen property consisted of clothing, shoes, personal hygiene items, a prayer rug, and a six-way outlet. Payment of the \$25.00 filing fee was waived.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant contended that plaintiff has failed to prove his property was stolen as a proximate cause of negligence on the part of TCI staff. Defendant asserted that plaintiff failed to prove his property was not recovered as a result of a breach of a duty of care owed to him by TCI. Defendant acknowledged that the reported theft was never investigated.

{¶ 4} 4) Plaintiff filed a response insisting that defendant should bear liability for the loss of all property claimed.

CONCLUSIONS OF LAW

{¶ 5} 1) 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* (1979), 76-0356-AD.

{¶ 6} 2) 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* (1977), 76-0368-AD.

{¶ 7} 3) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, 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.

{¶ 8} 4) 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* (1985), 85-01546-AD.

{¶ 9} 5) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 10} 6) In order to prevail, 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.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 11} 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, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 12} 8) The allegation that a theft may have occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show that defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 13} 9) 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* (1978), 86-02635-AD.

{¶ 14} 10) 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* (1987), 86-02635-AD. Defendant is not required to take extraordinary measures to provide inmates means to secure their property. *Andrews v. Allen Correctional Inst.* (2009), 2008-09732-AD.

{¶ 15} 11) 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* (1981), 79-0132-AD.

{¶ 16} 12) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, 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, plaintiff's property items claimed were indistinguishable and, therefore, no duty to search arose.

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

{¶ 18} 14)Plaintiff has failed to prove, by a preponderance of the evidence, that any of his property was stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD. *Hall v. London Correctional Inst.*, Ct. of Cl. No. 2008-04803-AD, 2008-Ohio-7088.

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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 defendant. Court costs are assessed against plaintiff.

MILES C. DURFEY
Deputy Clerk

Entry cc:

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RDK/laa
6/18
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