

IN THE COURT OF CLAIMS OF OHIO

DEVAN OWENS

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2025-00011AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Devan Owens (“plaintiff”), an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on October 15, 2023, at defendant’s Marion Correctional Institution, plaintiff was moved to segregation. Plaintiff states that on October 16, 2023, defendant’s employee packed up plaintiff’s personal property but confiscated his JP5 mini player as contraband. Plaintiff alleges that his JP5 tablet was improperly destroyed in violation of internal prison policies. Plaintiff appealed the investigation and the Chief Inspector’s Office held that the destruction of plaintiff’s property was in violation of prison policies and offered plaintiff reimbursement for the value of the JP5 tablet. Plaintiff refused this offer.

{¶2} Plaintiff seeks damages in the amount of \$2,262.58 which includes the value of the JP5 tablet as well as digital content which is no longer accessible. Plaintiff was not required to submit the \$25.00 filing fee.

{¶3} Defendant submitted an investigation report denying liability in this matter. Defendant states that in July 2023, ODRC issued a notice to all inmates instructing them to turn in their JPay tablets for nominal costs, or to have them mailed out of the institution at ODRC’s expense. ODRC offered inmates who turned in their tablets additional rebates to be utilized with the new G.T.L. tablets and ViaPath software. ODRC informed inmates that any tablets not turned in or mailed out would be considered contraband and confiscated after October 1, 2023. On October 15, 2023, plaintiff was moved to segregation and his JP5 tablet was confiscated as contraband. Defendant admits that

after further investigation it was determined that internal prison policies were violated and the original inspector report denying reimbursement was overturned and plaintiff was offered an unspecified nominal amount for his tablet which plaintiff refused. Defendant argues that because the original determination was that plaintiff's tablet was contraband, defendant is entitled to discretionary immunity and that plaintiff's claims should be denied. Defendant additionally argues that plaintiff has not provided evidence that he purchased the alleged 2,383 songs and 14 games on the JP5 tablet.

{¶4} Plaintiff filed a response, wherein he reasserts his claim and states that he rejected the reimbursement offer as "I felt [it] was grossly unfair with respect to the true value of my JP5". Plaintiff also provided receipts which show instances where he transferred money from his personal account to JPay media services. Plaintiff reduced his prayer amount to \$2,158.02 and admitted that 2,383 songs were transferred from his JPay to ViaPath.

{¶5} To prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed plaintiff a duty, that defendant breached that duty, and that defendant's breach proximately caused plaintiff's damages. *Armstrong v. Best Buy Co., Inc.*, 2003-Ohio-2573, ¶ 8, citing *Menifee v. Ohio Welding Prod., Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶6} Whether a duty exists is a question of law to be decided by the court, while breach of such duty is a question of fact. *Snay v. Burr*, 2021-Ohio-4113, ¶ 14, citing *Mussivand v. David*, 45 Ohio St.3d 314, 318 (1989).

{¶7} "[Defendant] does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but it does have the duty to make reasonable attempts to protect such property. When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. By virtue of this relationship, [defendant] must exercise ordinary care in handling and storing an inmate's property. However, a correctional institution cannot be held liable for the loss of contraband property that an inmate has no right to possess." (Internal citations omitted.) *Triplett v. S. Ohio Corr. Facility*, 2007-Ohio-2526, ¶ 7 (10th Dist.).

{¶8} This court has consistently held that "[i]f property is lost or stolen while in defendant's possession, it is presumed, without evidence to the contrary, defendant failed

to exercise ordinary care.” Internal citations omitted. *Velez v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-2932 (Ct. of Cl.), ¶ 6.

{¶9} Plaintiff has the burden of proving, by a preponderance of the evidence, that plaintiff suffered a loss and that this loss was proximately caused by defendant’s negligence. *Coffman v. Mansfield Corr. Inst.*, 2009-Ohio-5859, ¶ 9 (10th Dist.).

{¶10} In addition, prison regulations, including those contained in the Ohio Administrative Code (“OAC”), “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), citing *Sandlin v. Conner*, 515 U.S. 472, 481-482 (1995). Moreover, 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. & Corr.*, 67 Ohio Misc.2d 1, 3 (Ct. of Cl. 1993). Accordingly, to the extent that plaintiff alleges that ODRC violated internal prison regulations and the OAC, plaintiff fails to state a claim for relief. See *Sharp v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-7064 (Ct. of Cl.), ¶ 5.

{¶11} To recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining plaintiff’s claim. If plaintiff’s evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, plaintiff fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82 (1954).

{¶12} The Supreme Court of Ohio has held that “the Court of Claims does not have jurisdiction when the state makes highly discretionary decisions pursuant to its legislative, judicial, executive, or planning functions, because the state has not waived its sovereign immunity for those decisions.” *Smith v. Ohio State Univ.*, 2024-Ohio-764, ¶ 16. Therefore, “discretionary immunity is a jurisdictional bar” and “the Court of Claims does not have subject-matter jurisdiction when discretionary immunity applies.” *Id.* However, “discretionary immunity is not absolute. Once a discretionary decision has been made to engage in a certain activity, ‘the state may be held liable, in the same manner as private parties, for the negligence of the actions of its employees and agents in the performance of such activities.’” *Id.* at ¶ 17, quoting *Reynolds v. State*, 14 Ohio St.3d 68 (1984),

paragraph one of the syllabus. Thus, “when a suit challenges the manner in which the state implements one of its discretionary decisions, the Court of Claims will not be barred from hearing the case.” *Id.* at ¶ 17.

{¶13} With respect to prison administration, specifically, it is well settled that “[p]enal institutions are ‘accorded deference in adopting and executing policies and procedures to maintain order.’” *Allen v. Ohio Dept. of Admin. Servs. Office of Risk Mgmt.*, 2020-Ohio-1138, ¶ 18 (10th Dist.), quoting *Hughes v. Ohio Dept. of Rehab. & Corr.*, 2010-Ohio-4739, ¶ 17 (10th Dist.). Importantly, decisions that concern prison security and administration are executive functions that involve a high degree of official discretion. See *Skorvanek v. Ohio Dept. of Rehab. & Corr.*, 2018-Ohio-3870, ¶ 84 (10th Dist.); see also *Burse v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-2882, ¶ 17 (10th Dist.).

{¶14} To determine whether defendant is entitled to discretionary immunity, the court looks to which decisions or actions plaintiff challenges. See *McDermott v. Ohio State Univ.*, 2025-Ohio-396, ¶ 23 (10th Dist.); see also *Smith v. Ohio State Univ.*, 2024-Ohio-5887, ¶ 25 (10th Dist.). As noted previously by this court, “Defendant’s policy decisions regarding what tablet devices to which inmates have access within ODRC institutions to best prevent security vulnerabilities and what vendors with which it contracts to secure that technology concern prison safety and administration and, as such, are executive functions that involve a high degree of official discretion. Therefore, any claims stemming therefrom are barred by the doctrine of discretionary immunity. See, e.g., *Smith*, 2024-Ohio-5887, ¶ 28-31 (10th Dist.).” *Wolfe v. Ohio Dept. of Rehab. & Corr.*, 2025-Ohio-1250, ¶ 19 (Ct. of Cl.).

{¶15} Additionally, the language in the Court of Claims Act at R.C. 2743.02 providing that “‘the state’ shall have its liability determined . . . in accordance with the same rules of law applicable to suits between private parties . . .” means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State*, 14 Ohio St.3d 68, 70 (1984). “[T]he Court of Claims does not have subject-matter jurisdiction when discretionary immunity applies . . .” *Smith v. Ohio State Univ.*, 2024-Ohio-764, ¶ 16. This court does not have jurisdiction to review defendant’s decisions as determination of

what constitutes contraband has routinely been held to be a discretionary decision for which defendant is immune. See *Bailey v. Ohio Dept. of Rehab. & Corr.*, Ct of Cl. No. 2024-00669AD (April 8, 2025).

{¶16} 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 (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 (1964). The court finds plaintiff's statement not particularly persuasive.

{¶17} Here, plaintiff neither claims that defendant was negligent in its execution of the tablet phase-out program it implemented, nor does he set forth any allegation that defendant prevented him from participating in the program before the October 1, 2023 deadline. Plaintiff's argument ultimately is that ODRC did not offer him the full value of his device and digital purchases.

{¶18} Insofar as plaintiff brings claims related to the designation of his tablet as contraband and or violations of policies related to contraband, this court lacks subject-matter jurisdiction. However, while neither party provided details regarding what the settlement offer rejected by plaintiff entailed, the court finds that as defendant has admitted fault regarding internal prison policies, that plaintiff is entitled to the original offer to inmates for trade-in of their tablets, a \$10.00 credit.

{¶19} Therefore, judgment is rendered in favor of plaintiff in the amount of \$10.00.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

{¶20} 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 \$10.00. Court costs are assessed against defendant.

HOLLY TRUE SHAVER
Deputy Clerk

Filed 7/8/25
Sent to S.C. Reporter 9/9/25