

IN THE COURT OF CLAIMS OF OHIO

DARNELL GIBSON

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2024-00862AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Darnell Gibson (“plaintiff”), an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on June 29, 2024, at defendant’s Richland Correctional Institution, plaintiff was moved to the Special Management Unit (“SMU”) and his personal property was packed up by defendant’s employees. Plaintiff states that he refused to sign the pack-up slip that was presented to him as much of his personal property was not listed. Plaintiff states that the following items were either lost or stolen: one (1) ClearTunes TV, one (1) fan, one (1) pair of Koss headphones, one (1) power strip, one (1) GTL Tablet, one (1) GTL charger, one (1) pair of GTL earbuds, and one (1) cable cord.

{¶2} Plaintiff seeks damages in the amount of \$400.00. 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 plaintiff fails to demonstrate proof of ownership/possession as prior pack-up reports do not demonstrate possession at the time of the alleged incident. Additionally, defendant argues that plaintiff has failed to demonstrate that he purchased any of the alleged items as there is no record of plaintiff purchasing or receiving the items. Defendant states that the last package plaintiff received was in 2022. Plaintiff filed a response wherein he reasserts his argument and states that the allegedly lost property was purchased between 2014 and 2015.

{¶4} 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 *Meniffee v. Ohio Welding Prod., Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶5} 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).

{¶6} “[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.).

{¶7} 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. However, “[p]laintiff's failure to prove delivery of [the property] to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property.” Internal citations omitted. *Jones v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-365 (Ct. of Cl.), ¶ 10. Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Corr. Inst.*, 2005-Ohio-4455 (Ct. of Cl.), *obj. overruled*, 2005-Ohio-5068.

{¶8} 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.).

{¶9} 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 somehow 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.

{¶10} 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).

{¶11} 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.

{¶12} Here, defendant’s investigation report notes that plaintiff was moved to the SMU at 2:36 am for assaulting a corrections officer. Because of the infraction, plaintiff was not allowed to be present for the pack-up of his property. At 3:20 am, defendant’s employees packed-up plaintiff property. Defendant notes that during plaintiff’s pack-up, plaintiff’s property was not properly secured pursuant to ODRC policy. Accordingly, it is likely that any property plaintiff legally possessed was stolen by another inmate and not lost due to defendant’s negligence. While plaintiff has presented pack-up slips prior to his transfer to the SMU, these do not demonstrate possession at the time of the alleged incident, only that plaintiff was in possession of the alleged items on May 2, 2024, not June 29, 2024. Additionally, in support of his argument, plaintiff provided various Certificates of Ownership. However, Certificates of Ownership only demonstrate that an

inmate is the legal owner of the item, not that they possess the item at the time of the incident, nor that they purchased the item.

{¶13} Therefore, judgment is rendered in favor of defendant.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

{¶14} 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.

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HOLLY TRUE SHAVER  
Deputy Clerk