

total claim amounts to \$101.20. The filing fee was paid.

{¶ 3} 3) Defendant acknowledged the NCCI Rules Infraction Board ordered inmates Straub and Walters to pay plaintiff restitution for stolen property. However, both Straub and Walters never had enough funds in their inmate accounts before release to make restitution possible. Defendant explained, "[a]ccording to the Ohio Administrative Code 5120-3-08(C), the Rules Infraction Board may recommend a limited reduction in future earnings for disciplinary reasons such as restitution."¹ No administrative code section or statute provides any mechanism for individuals in plaintiff's position to seek unpaid restitution from defendant. Essentially, defendant contended it had no duty to reimburse plaintiff for uncollected restitution.

{¶ 4} 4) Plaintiff insisted, in his response to defendant's investigation report, defendant could have collected restitution from inmate Straub at sometime before his release from incarceration in September, 2004. Plaintiff reasserted defendant should bear the responsibility for paying him the remainder of the unpaid restitution. However, plaintiff did not produce any authority establishing defendant's liability in a similar circumstance to the one presented. Plaintiff argued defendant was negligent in failing to make a reasonable attempt to collect the restitution.

¹ Ohio Administrative Code 5120-3-08(C)(2) states:

"(C) Reduction of compensation for disciplinary reasons.

"(2) The rules infraction board may recommend a reduction of future compensation due to a rules infraction. Reductions shall require the approval of the managing officer and shall not exceed fifty per cent of normal compensation and shall not be reduced below three dollars."

Additionally, Ohio Administrative Code 5120-9-07(K)(5) stated:

"(K) The rules infraction board shall have the authority to impose or suspend the following action in disposing of rule infractions. The following are authorized dispositions:

"(5) Recommending to the managing officer that the inmate be required to make reasonable restitution, or that his earnings be reduced by reduction of earnings pursuant to rule 5120-3-02 of the Administrative Code."

This code section was in effect at the time of plaintiff's incident.

CONCLUSIONS OF LAW

{¶ 5} 1) The mere fact that a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶ 6} 2) 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), 78-0217-AD.

{¶ 7} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion 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.

{¶ 8} 4) Plaintiff's claim sets forth an action sounding in negligence. In order for plaintiff to prevail upon a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injury. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. The Ohio Administrative Code does not create an affirmative duty on the part of defendant to collect and disburse restitution. Furthermore, defendant has no duty to indemnify plaintiff for uncollected restitution.

IN THE COURT OF CLAIMS OF OHIO

JERRY HANKINS :
Plaintiff :
v. : CASE NO. 2004-09274-AD

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTIONS

:

ENTRY OF ADMINISTRATIVE
DETERMINATION

:

Defendant

: : : : : : : : : : : : : : : :

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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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