

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

ANTHONY SMITH

Plaintiff

v.

OHIO DEPT. OF REHAB. AND CORR.

Defendant

Case No. 2008-06954-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Anthony Smith, an inmate incarcerated at defendant's North Central Correctional Institution ("NCCI"), filed this action alleging several items of his personal property were stolen from his locker box as a proximate cause of negligence on the part of NCCI staff. Plaintiff alleged NCCI personnel failed to maintain a secure prison environment consequently his property was stolen from his locker box by an unidentified individual or individuals on January 15, 2008 at approximately 5:00 p.m. Plaintiff claimed his athletic shoes, headphones, television remote control, food items, hygiene items, and electronic equipment were stolen and he filed this complaint seeking to recover \$180.12 in damages for property loss. Plaintiff was not required to pay a filing fee.

{¶ 2} 2) Plaintiff asserted that after he reported the theft, defendant failed to perform an adequate search for his property. Plaintiff explained the search was confined to the perimeters of his own living area cubicle and did not extend beyond that narrow space. Plaintiff contended the failure of NCCI personnel to expand the search

for his property beyond his cubicle constitutes actionable negligence in regard to making an reasonable effort to recover reported stolen property.

{¶ 3} 3) Defendant advised plaintiff reported a theft of athletic shoes on January 2, 2008 and “a theft/loss report was completed by staff.” A copy of the theft/loss report was submitted which recorded a search was conducted in the cubicles in the vicinity of plaintiff’s housing assignment area. Defendant related plaintiff reported a second theft on January 3, 2008 and NCCI personnel conducted a prompt investigation. A theft/loss report referencing this second reported January 3, 2008 theft was submitted. According to this theft/loss report, plaintiff complained various food and hygiene items, a set of headphones, a remote control, electronic accessories, and other miscellaneous items had been stolen from his secured locker box. This report noted NCCI personnel conducted a shakedown search of “Marion B-side,” but did not recover any stolen property. During a shakedown search on January 4, 2008, plaintiff’s headphones were found in the possession of another inmate. The headphones were confiscated and stored in the NCCI contraband vault. Defendant stated “[t]he headphones were inadvertently disposed of on January 15, 2008.” On March 11, 2008, plaintiff signed a Release of Claim (document submitted) acknowledging he agreed to reimbursement in the amount of \$15.49 as a settlement for the destroyed headphones.

{¶ 4} 4) Defendant denied liability for any property loss plaintiff may have suffered. Defendant contended plaintiff failed to prove NCCI staff breached any duty of care owed to protect or recover his property. Defendant maintained adequate searches were conducted for plaintiff’s property upon being informed of the thefts. Furthermore, defendant argued any duty owed to plaintiff in regard to property protection was discharged when he was given access to a locker box.

{¶ 5} 5) Plaintiff filed a response disputing defendant’s contention that adequate searches were conducted for his property. Plaintiff specifically disputed defendant’s assertion that “Marion B-side” at NCCI was searched on January 3, 2008. Plaintiff expressed the opinion that it is highly unlikely NCCI staff searched any significant area of “Marion B-side” which contains one hundred twelve beds and fifty-six cubicle bed space areas. Additionally, plaintiff pointed out “[i]f wall mounted video surveillance was reviewed at the time the theft occurred and a search conducted beyond the confines of [p]laintiff’s cubicle while the culprits were still securely locked in

the dormitory, a different outcome may have prevailed.” Plaintiff contended defendant’s failure to utilize video surveillance to identify thieves and consequently, recover stolen property constituted actionable negligence. Plaintiff stated he repeatedly advised NCCI employees “on various dates forewarning of the impending threat to his personal safety and loss of property, however, these warnings went ignored.”

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) 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.

{¶ 10} 5) 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, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Connor* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Indeed, the 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. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff asserts claims based upon alleged violations of internal rules and regulations, he fails to state a claim for relief.

{¶ 11} 6) 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, 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.

{¶ 12} 7) In order to prevail, 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 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.

{¶ 13} 8) "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.

{¶ 14} 9) 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 defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 15} 10) 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.

{¶ 16} 11) The fact 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.

{¶ 17} 12) 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.

{¶ 18} 13) 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, the bulk of plaintiff's property items claimed were indistinguishable and, therefore, no duty

to search arose.

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

{¶ 20} 15)Plaintiff has failed to prove, by a preponderance of the evidence, 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.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
1/15
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