

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

NATHANIEL JOSEPH GREGA

Plaintiff

v.

WARREN CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-01395-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Nathaniel J. Grega, an inmate formerly incarcerated at defendant, Warren Correctional Institution (“WCI”), stated he “left (WCI) for outside court on March 10, 2008 (and) left my T.V. with inmate Walker.” Apparently plaintiff loaned his television set to inmate Walker during the time he was away from WCI. Plaintiff related at sometime after he loaned his television set, WCI staff confiscated the device and subsequently gave the set to another inmate.

{¶ 2} 2) In another matter, plaintiff asserted when he left WCI on March 10, 2008, defendant’s personnel “failed to pack up all my stuff from my clothes (and) food box” that he initially received on January 3, 2008. Plaintiff submitted copies of receipts for clothing and other items and food stuffs shipped from “Access Securepak” on January 3, 2008.

{¶ 3} 3) Plaintiff contended his clothing, food products, and other property were lost as a result of negligence on the part of WCI staff. Additionally, plaintiff contended WCI personnel had no authority to confiscate his loaned television set and then give it away. Consequently, plaintiff filed this complaint seeking to recover \$473.10, the total replacement cost for a television set, clothing, food products, and

other listed items. The filing fee was paid.

{¶ 4} 4) Defendant denied liability in this matter arguing that none of the property claimed ever entered the possession and custody of WCI staff. Defendant maintained plaintiff “donated his TV to WCI upon his departure for the out-to-court trip” on March 10, 2008. Defendant explained plaintiff’s property inventory dated March 10, 2008 does not list a television set. The March 10, 2008 property inventory does not list any of the food products plaintiff purchased on or about January 3, 2008. The clothing and other items plaintiff purchased on January 3, 2008 that are listed on the March 10, 2008 property inventory include a photo album, pens, tablets, a towel, socks, undershorts, gym shorts, a belt, and stocking hats. Defendant asserted the WCI Vault Officer confirmed plaintiff donated his television set and it was not confiscated. Defendant stated “the television was considered contraband when taken from (plaintiff’s) cell mate.

{¶ 5} 5) Plaintiff filed a response insisting he did not voluntarily donate his television set and defendant has not supplied any documentation to prove he in fact did donate the television. Furthermore, plaintiff noted there is no record WCI staff packed on March 10, 2008 all his clothing items, food products, and other items purchased on January 3, 2008.

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) 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 evidence so produced furnishes a basis for only a guess, among different possibilities, as to any essential issues 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.

{¶ 11} 6) For plaintiff to prevail on 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 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.

{¶ 12} 7) Plaintiff's failure to prove delivery of multiple property items purchased on January 3, 2008 to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 13} 8) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish defendant actually assumed control over property. *Whiteside v. Orient Correctional Institution*, Ct. of Cl. No. 2002-05751, 2005-Ohio-4455, obj. overruled, 2005-Ohio-5068; *Zakiy v. Ohio State Penitentiary*, Ct. of Cl. No. 2008-05320, 2009-Ohio-1976.

{¶ 14} 9) This court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD; *Watley v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2007-05270-AD, 2008-Ohio-5187.

{¶ 15} 10) An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD; *Watley v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2007-04079-AD, 2007-Ohio-7235.

{¶ 16} 11) Plaintiff, by loaning his television set to his cellmate, effectively relinquished all ownership rights in the property. *Johnson v. Ohio Reformatory For Women*, Ct. of Cl. No. 2004-01087-AD, 2004-Ohio-4818.

{¶ 17} 12) Therefore, an inmate plaintiff has no right to pursue a claim for lost

property in which he cannot prove ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD.

{¶ 18} 13) The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the confiscated property was not owned by plaintiff. Therefore, plaintiff may not recover damages associated with the loss of property he did not own. See *Mumm v. Ohio Dept. of Rehab. and Corr., et al.*, Ct. of Cl. No. 2004-04574-AD, 2004-Ohio-5134.

{¶ 19} 14) Plaintiff has failed to prove, by a preponderance of the evidence, his property items were lost 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
6/4
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