

[Cite as *Cotterman v. Ohio Dept. of Corr. and Rehab.*, 2004-Ohio-5051.]

IN THE COURT OF CLAIMS OF OHIO

DONALD COTTERMAN	:	
Plaintiff	:	
v.	:	CASE NO. 2003-10856-AD
OHIO DEPARTMENT OF CORRECTIONS AND REHABILITATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Donald Cotterman, an inmate who was incarcerated at defendant’s Mansfield Correctional Institution (ManCI), has alleged that on July 10, 2003, an unidentified inmate entered his unlocked cell and stole multiple items of personal property stored inside. Plaintiff contended access to his cell was made available when a ManCI employee unlocked the cell door during a time plaintiff was absent from the cell.

{¶ 2} 2) Plaintiff argued his property was stolen as a proximate cause of negligence on the part of ManCI staff in permitting a thief access to the contents in plaintiff’s cell. Consequently, plaintiff filed this complaint seeking to recover \$358.55, the estimated replacement value of the property he claimed was stolen on July 10, 2003. The requisite material filing fee was paid.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant denied any ManCI personnel unlocked plaintiff’s cell door on July 10, 2003, permitting a thief to enter the cell and steal plaintiff’s property. Defendant explained ManCI records indicate plaintiff should have been present in his cell at the time of the alleged theft. Plaintiff did report a theft on August 3, 2003, more than three weeks after the alleged July 10, 2003, incident.

{¶ 4} 4) Plaintiff insisted he reported the alleged theft to ManCI personnel on July 10, 2003, although no record has been submitted to establish a report was made. Plaintiff also insisted he was not in his cell when the alleged theft occurred. Plaintiff reasserted his cell door was unlocked by defendant's employee resulting in the theft of property from his cell. Plaintiff maintained defendant is lying about the events of July 10, 2003.<sup>1</sup>

#### CONCLUSIONS OF LAW

{¶ 5} 1) 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.

{¶ 6} 2) 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} 3) 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} 4) 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*, supra.

{¶ 9} 5) 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.

{¶ 10} 6) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony.

---

<sup>1</sup> Plaintiff filed a response to defendant's investigation report on July 23, 2004.

*State v. Anthill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particularly persuasive.

{¶ 11} 7) 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.

{¶ 12} 8) 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 issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 13} 9) Defendant, when it retains control over whether an inmate's cell door is to be open or closed, owes a duty of reasonable care to inmates who are exclusively forced to store their possession in the cell while they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD.

{¶ 14} 10) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to lock his cell door, and therefore, no liability shall attach to defendant as a result of any theft. *Carrithers v. Southern Ohio Correctional Facility* (2002), 2001-09079-AD.

{¶ 15} 11) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

IN THE COURT OF CLAIMS OF OHIO

DONALD COTTERMAN :

Plaintiff :

v. :

OHIO DEPARTMENT OF CORRECTION :

CASE NO. 2003-10856-AD

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:

Donald Cotterman, #394-895  
P.O. Box 45699  
Lucasville, Ohio 45699

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel  
Department of Rehabilitation  
and Correction  
1050 Freeway Drive North  
Columbus, Ohio 43229

For Defendant

RDK/laa  
8/19  
Filed 8/24/04  
Sent to S.C. reporter 9/22/04