

[Cite as *Starkey v. Ohio State Penitentiary Corr. Camp*, 2004-Ohio-6150.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL STARKEY :  
 :  
 Plaintiff :  
 :  
 v. : CASE NO. 2004-06381-AD  
 :  
 OHIO STATE PENITENTIARY : MEMORANDUM DECISION  
 CORRECTIONAL CAMP :  
 :  
 Defendant :  
 :  
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FINDINGS OF FACT

{¶ 1} 1) On April 7, 2004, at approximately 8:00 a.m., plaintiff, Michael Starkey, an inmate incarcerated at defendant, Ohio State Penitentiary (OSP), was transferred to a segregation unit.

{¶ 2} 2) Plaintiff asserted OSP personnel were obligated to pack his personal property within a reasonable time after his transfer. However, according to plaintiff, his property was packed at 10:00 p.m. on April 7, 2004, approximately fourteen hours from the time he was transferred to a segregation unit. Plaintiff did not submit any evidence to support the allegation that his property was packed about 10:00 p.m. on April 7, 2004.

{¶ 3} 3) Plaintiff alleged several items of his personal property were stolen from his locked locker box at sometime after he was transferred. Plaintiff contended his property was stolen as a proximate cause of negligence on the part of OSP staff in delaying the pack-up of his property. Consequently, plaintiff filed this complaint seeking to recover \$109.67, the estimated value of the alleged stolen property. Plaintiff was excused from paying the requisite filing fee.

{¶ 4} 4) Defendant asserted plaintiff failed to produce sufficient evidence to establish OSP personnel were negligent in handling his property incident to the April 7, 2004, transfer.

## CONCLUSIONS OF LAW

{¶ 4} 1) The mere allegation a theft 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.

{¶ 5} 2) Defendant is not responsible for actions of other 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.

{¶ 6} 3) The fact defendant supplied plaintiff with a locker box and lock to secure valuable constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 7} 4) 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.

{¶ 8} 5) 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.

{¶ 9} 6) Plaintiff may show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Warren Correctional Institution* (2000), 2000-05142-AD.

{¶ 10} 7) However, in the instant claim, plaintiff has failed to prove any delay in packing his property resulting in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD.

## IN THE COURT OF CLAIMS OF OHIO

MICHAEL STARKEY

:

Plaintiff	:	
v.	:	CASE NO. 2004-06381-AD
OHIO STATE PENITENTIARY	:	<u>ENTRY OF ADMINISTRATIVE</u>
CORRECTIONAL CAMP	:	<u>DETERMINATION</u>
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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Michael Starkey 275 College Park Apt. D15 Elyria, Ohio 44305	Plaintiff, Pro se
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Gregory C. Trout, Chief Counsel Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, Ohio 43229	For Defendant
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