

[Cite as *Blackmon v. Ohio State Penitentiary*, 2005-Ohio-4329.]

IN THE COURT OF CLAIMS OF OHIO

THOMAS J. BLACKMON :
Plaintiff :
v. : CASE NO. 2004-09843-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On or about May 9, 2004, plaintiff, Thomas J. Blackmon, an inmate incarcerated at defendant, Ohio State Penitentiary ("OSP"), was transferred to a segregation unit. Plaintiff's personal property was inventoried, packed, and delivered into the custody of OSP staff incident to this transfer.

{¶ 2} 2) Plaintiff related he was released from segregation on or about May 27, 2004, and some of his property was returned to him. Plaintiff further related he received additional property items on or about May 29, 2004. However, plaintiff claimed defendant failed to return all his property. Plaintiff asserted two sweatshirts, a pair of gym shorts, a long underwear top, a bowl with lid, a tumbler, a coffee cup, a bottle of lotion, a container of shampoo, and assorted condiments were not among the returned items.

{¶ 3} 3) In another matter, plaintiff explained he received three cassette tapes through the mail on or about June 24, 2004. According to plaintiff, one cassette tape was defective. Therefore, plaintiff maintained he authorized defendant's personnel

to mail this alleged defective cassette tape back to the sender. Plaintiff professed the cassette tape was delivered to defendant's mailroom and was lost before it could be mailed out of OSP.

{¶ 4} 4) Plaintiff consequently filed this complaint seeking to recover \$165.00, the estimated value of the property items allegedly lost while under the control and care of OSP employees. The filing fee was paid.

{¶ 5} 5) Defendant denied any of plaintiff's property was lost while under the custody of OSP staff. Defendant submitted a copy of an inventory of plaintiff's property compiled on May 25, 2004. This inventory lists, among other property, two sweatshirts, one long underwear top, one pair of gym shorts, one bowl, three bottles of lotion, two containers of shampoo, and a drinking bottle. Assorted condiments, a tumbler, and a coffee cup are not listed on the inventory. The inventory bears a signature, purportedly to be plaintiff's, where he acknowledges receipt of all property listed.

Defendant stated that plaintiff complained to OSP personnel about missing property and a search was initiated. Defendant asserted a sweatshirt, bowl, lotion, and shampoo were among property items found during a search of plaintiff's cell. Defendant denied ever receiving a cassette tape from plaintiff. Defendant contended plaintiff did not follow institutional procedure in authorizing the mailing of a cassette tape. Defendant further contended plaintiff failed to prove he delivered a cassette tape for mailing to OSP employees. Additionally, plaintiff failed to prove any of his property was lost at the time he was transferred to a segregation unit during May, 2004.

{¶ 6} 6) In his response to defendant's investigation report, plaintiff submitted a copy of a disposition of defendant's Rules Infraction Board, who found plaintiff guilty of an institutional rule violation and assigned plaintiff to a segregation unit from

May 9, 2004, to May 21, 2004. Although it may be assumed defendant inventoried and packed plaintiff's property when he was transferred to the segregation unit, a copy of plaintiff's property inventory compiled on or about May 9, 2004, was not filed. Plaintiff insisted OSP personnel assumed control over all property items claimed and these items were lost while under the custody of defendant. Other than his own assertions, plaintiff has not submitted any evidence to substantiate his allegation that defendant lost the property claimed.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 4) Plaintiff's failure to prove delivery of certain property 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.

{¶ 11} 5) 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} 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. *State v. Anthill* (1964), 176 Ohio St. 61.

{¶ 13} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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THOMAS J. BLACKMON	:	
Plaintiff	:	
v.	:	CASE NO. 2004-09843-AD
OHIO STATE PENITENTIARY	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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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