

# 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

WILLIAM WHITEHEAD

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2006-03851-AD

Daniel R. Borchert

Deputy Clerk

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, William Whitehead, an inmate who was incarcerated at defendant's Warren Correctional Institution ("WCI"), has alleged on November 21, 2005, at approximately 12:20 p.m., an unidentified inmate entered his unlocked cell and stole his CD player, headphones, and adapter stored inside. Plaintiff contended access to his cell was made available when a WCI employee unlocked the cell door during a time plaintiff was absent from the cell. A prompt, but fruitless search was conducted after plaintiff reported the theft of his property.

{¶ 2} 2) Plaintiff argued his property was stolen as a proximate cause of negligence on the part of WCI staff in permitting thieves access to the contents in plaintiff's cell. Consequently, plaintiff filed this complaint seeking to recover \$64.78 for property loss. Plaintiff also claimed \$2.76 for postage costs. Postage expenses are not compensable in a claim of this type. Plaintiff's claims for postage costs are denied and shall not be further addressed. Plaintiff's total damage claim amounts to \$64.78. The filing fee was waived.

3) Defendant denied any liability in this matter. Defendant contended plaintiff possessed a locker box which could be secured to store his valuable property.

Defendant suggested plaintiff's own negligence in choosing not to secure his property was the proximate cause of the loss claimed. Defendant denied the property loss claimed was the result of any negligent act or omission on the part of WCI personnel.

{¶ 3} 4) Defendant contended plaintiff did not offer sufficient evidence to prove WCI staff left his cell door unlocked on November 21, 2005, thereby facilitating a theft. Defendant further contended plaintiff failed to prove his property was stolen and if a theft did occur the property loss was attributable to any negligent act or omission on the part of WCI staff.

{¶ 4} 5) Plaintiff filed a response insisting his property was stolen and defendant should bear liability for the total loss claimed.

#### CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 3) The mere fact 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*.

{¶ 8} 4) 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.

{¶ 9} 5) 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.

{¶ 10} 6) 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.

{¶ 11} 7) 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, 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.

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

{¶ 13} 9) 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.

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

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Plaintiff, Pro se

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For Defendant

RDK/laa  
9/8  
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