

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

ABDUL-HAKIYM ZAKIY

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-05320-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On or about September 10, 2006, plaintiff, Abdul-Hakiym Zakiy, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), was transferred from the OSP general population to a security control unit. Incident to this transfer, OSP personnel entered plaintiff’s cell and packed his personal property. Plaintiff pointed out the packed property items were placed in an empty cell.

{¶ 2} 2) Plaintiff related he regained possession of his property on September 11, 2006 and “found numerous things missing.” Plaintiff maintained the particular missing property items included: “1 container of coffee, 1 container of sugar, 1 container of creamer, 1 container of soap powder, 1 container of glue, 3 hand made skull caps, 1 bottle of hair spray, 1 4 oz bottle of prayer oil, 1 oz bottle of Nautica prayer oil, 2 sets of ear plugs, 1 jar of petroleum jelly, 1 4 oz bottle of baby oil, 1 sewing kit, 1 Sony Walkman, 1 Teena Marie CD.” Plaintiff contended his property was lost as a proximate cause of negligence on the part of defendant and he has consequently filed this complaint seeking to recover damages in the amount of \$96.87, the total

replacement cost of the alleged lost property. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Plaintiff reported the loss of his property to OSP staff on or about September 13, 2006. Defendant filed an "Inmate Property Theft/Loss Report" on October 6, 2006. In this report it was recorded the following items were missing: "1 bag coffee, 1 container coffee creamer, 1 container sugar, 1 container soap powder, 1 container glue, 3 hand made skull caps, 1 bottle hair spray, 1 4 oz. bottle prayer oil, 1 1 oz. bottle prayer oil, 1 container toothpicks, 2 sets ear plugs, 1 jar petroleum jelly, 1 Teena Marie CD, 1 4 oz. bottle baby oil, 4 spools sewing thread, 1 sewing needle, 1 Sony Walkman."

{¶ 4} 4) Defendant denied any liability in this matter. Defendant acknowledged plaintiff's property was packed and delivered into the custody of OSP personnel on or about September 11, 2006. In regard to particular property items claimed, defendant denied ever exercising control over the following: "1 Container of Glue, 3 Hand-Made Skull Caps, 1 Bottle Hair Spray, 2 Sets Ear Plugs, 1 Jar Petroleum Jelly, 1 Bottle Baby Oil." Defendant asserted the following items were packed and returned to plaintiff's possession: "1 Container of Coffee, 1 Container of Creamer, 1 Container Soap Powder, 1 Bottle Prayer Oil, 1 Bottle Nautica Prayer Oil, 1 Sewing Kit, 1 Sony Walkman." Defendant denied packing: "1 Container of Glue, 3 Hand-made Skull Caps, 1 Bottle of Hair Spray, 2 Sets Ear Plugs, 1 Jar Petroleum Jelly, 1 Bottle Baby Oil." Defendant submitted a copy of plaintiff's property inventory dated September 11, 2006 and compiled incident to his transfer to segregation. This inventory does not list any glue, skull caps (3 stocking caps are listed), hair spray, earplugs, petroleum jelly, or baby oil. Defendant pointed out plaintiff's Teena Marie CD was confiscated as contraband due to the fact it was altered ("orange paper glued to it"). It appears this CD was subsequently destroyed by defendant on or about November 16, 2006. Defendant submitted a "Contraband Control Slip" dated September 11, 2006, which lists a CD among other property was confiscated from plaintiff's possession and designated contraband. The "Contraband Control Slip" contains a "Destroy 11/16/06" advisement under the contraband disposition notation.

{¶ 5} 5) Plaintiff filed a response insisting he should be entitled to recover the replacement cost for all articles claimed. Plaintiff contended defendant had no authority

to destroy his Teena Marie CD and therefore he should receive the replacement cost for the destroyed CD. Plaintiff asserted all the other property listed in his complaint was packed by OSP staff and stored in an unsecured cell in the OSP B-5 housing pod; thereby facilitating the theft of the items claimed. Plaintiff contended all his packed property should have been secured in the OSP property vault, but was instead left in an unsecured cell that was “used by prisoners in B-5 as a bathroom when they were out for recreation.” Plaintiff submitted an affidavit from fellow inmate, Grady Brinkley a.k.a. Kahzakiyah Israel, who noted he saw two OSP employees enter plaintiff’s cell on September 11, 2006, remain in the cell for over an hour, and leave the cell and cellblock with property packed on a cart. Plaintiff also submitted an affidavit from fellow inmate Freddie McNeil, who related he witnessed two OSP employees pack plaintiff’s property, place the property on a cart, and wheel the cart away from the housing area. McNeil reported he subsequently heard plaintiff complaint to OSP staff about missing property. Additionally, plaintiff submitted another affidavit from fellow inmate, Stanley Adams, who is incarcerated in the B-5 housing pod of OSP. Adams recalled he saw OSP employees place someone’s property in B-5 cell 18 (an empty cell) on September 11, 2006. Adams further recalled “[p]risoners were still using this cell as a bathroom even with this prisoner’s property in it.”

CONCLUSIONS OF LAW

{¶ 6} 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 without fault) with respect to inmate property, but that it does have the duty to make “reasonable attempts to protect, or recover” such property. In the instant claim, plaintiff failed to prove his coffee, creamer, soap powder, prayer oil, sewing kit, and Sony Walkman were not recovered and returned to his possession.

{¶ 7} 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.

{¶ 8} 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.

{¶ 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 his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue 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) 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 Inst., Ct. of Cl. No. 2002-05751, 2005-Ohio-4455, obj. overruled, 2005-Ohio-5068.* Plaintiff failed to prove defendant actually exercised control over glue, skull caps, hair spray, ear plugs, petroleum jelly, and baby oil.

{¶ 12} 7) Plaintiff's failure to prove delivery of the above listed 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.

{¶ 13} 8) 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.

{¶ 14} 9) Prison regulations, including those contained in the Ohio Administrative Code, "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Additionally, this court has held that "even if defendant had violated the Ohio Administrative code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence." *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff alleges that ManCI staff failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 15} 10) Plaintiff has no right to pursue a claim for destroyed property in which

he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶ 16} 11) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 17} 12) An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is lost or destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD; jud, 2005-Ohio-4320; *Watson v. Ohio State Penitentiary*, Ct. of Cl. No. 2007-05229-AD, 2008-Ohio-2848.

{¶ 18} 13) Evidence has shown plaintiff's Teena Marie CD was altered (orange paper glued to it) and consequently was considered impermissible. No recovery can be had for the loss or destruction of impermissible altered property. See *Kemp v. Ohio State Penitentiary*, Ct. of Cl. No. 2006-02587-AD, 2006-Ohio-7247.

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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:

Abdul-Hakiym Zakiy, #A253-718
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
1/12
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