

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

DAVID NEWLAND

Plaintiff

v.

WARREN CORRECTIONAL
INSTITUTION

Defendant

Case No. 2006-06833-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On or about November 23, 2004, plaintiff, David Newland, an inmate incarcerated at defendant, Warren Correctional Institution (“WCI”), was transferred from the WCI general population to a segregation unit. Incident to this transfer, plaintiff’s personal property was packed, inventoried, and delivered into defendant’s custody.

{¶2} 2) Plaintiff asserted that WCI personnel failed to have all his personal property packed and left several items in his cell. Plaintiff explained that when he was permitted to examine his property inventory slip he informed defendant’s staff that all of the items he owned were not listed. Plaintiff related that he made requests for someone to retrieve the property left in his cell but that these requests were unfulfilled. Plaintiff stated his cellmate, James West, told defendant’s staff that he was the owner of all property items that remained in the cell. Consequently, no additional property was removed from plaintiff’s cell. Plaintiff maintained that he never regained possession of his property items left in his cell. Plaintiff was subsequently transferred from WCI to the Southern Ohio Correctional Facility.

{¶3} 3) Plaintiff recalled the following items were missing from his pack-up and were never recovered: miscellaneous commissary purchases, a color television set, a watch, one pair of gloves, a beard trimmer, a stereo, a walkman, a belt, one robe, a pair of gym shoes, two packs of undershorts, two pairs of gym shorts, two sweatshirts, two pairs of sweat pants, and one long sleeve t-shirt. Plaintiff contended that these property items were lost or stolen as a proximate cause of negligence on the part of WCI staff in failing to retrieve the items upon request. Plaintiff filed this complaint seeking to recover \$496.33, the estimated replacement value of the articles claimed. The filing fee was paid.

{¶4} 4) Defendant denied any liability in this matter. Defendant noted that plaintiff signed his property inventory (dated November 23, 2004) acknowledging that the items listed constituted a complete and accurate inventory of all his property. Defendant asserted that plaintiff failed to offer sufficient evidence to prove any of his property was lost or stolen as a result of negligent conduct on the part of WCI staff. Defendant admitted that plaintiff’s property was packed by his cellmate, James West, under the supervision of WCI employee, Officer Truett. West, Truett, and plaintiff all signed the property inventory compiled at the time that plaintiff’s property was packed. There is no record that plaintiff complained about missing unpacked property until December 17, 2004, when he made

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inquiries regarding his television set. On December 20, 2004, plaintiff filed a written “Kite” requesting access to the WCI vault to inspect his property and to determine what items had not been packed by James West.

{¶15} 5) On December 22, 2004, plaintiff again complained about missing property to WCI staff. Plaintiff asserted that his property was stolen by James West. On December 27, December 28, December 29, and December 30, 2004, plaintiff filed “Kites” complaining about stolen property. Defendant responded by conducting a search for plaintiff’s property. No property was recovered. On January 20, 2005, a formal Theft/Loss Report was filed at WCI regarding the issue with plaintiff’s November 23, 2004, property pack up. The January 20, 2005, Theft/Loss Report recorded a television set, radio/cassette player, watch, beard trimmers, and a pair of State Issue boots as the alleged stolen property items. WCI personnel conducted a search of, “each cell in units 3A/3B/3C,” including a search of plaintiff’s cell, 134 in Unit 3A. None of the reported property was found.

{¶16} 6) Plaintiff filed a written statement dated December 15, 2006, and signed on December 18, 2006, by Richard Dale Jenkins, who recorded that he was an inmate porter on cellblock unit 3A at WCI on November 23, 2004. Jenkins wrote that he delivered laundry to plaintiff’s cell on November 23, 2004, around the time that plaintiff was transferred to the WCI segregation unit. Jenkins recalled that he had a conversation with James West when he delivered plaintiff’s laundry. According to Jenkins, West told him that he had just sold plaintiff’s watch and beard trimmers and was trying to sell plaintiff’s television set. Additionally, Jenkins stated that he was present in the unit 3A cellblock when WCI employees conducted a search of the unit purportedly for plaintiff’s claimed property. Jenkins related that he did not see any WCI personnel enter any cells searching for stolen items. Jenkins recalled that the search he saw involved a trash can being placed in the middle of the cellblock followed by an announcement that inmates were granted a thirty minute amnesty to place contraband or stolen property in the trash can without

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consequences. Jenkins related that after the thirty minute time frame elapsed, the filled trash can was removed from the cellblock and no further search action was taken by WCI staff.¹

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) 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.

{¶11} 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.

{¶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

¹ Plaintiff filed a response to defendant’s investigation report on December 21, 2006, which included the statement of Richard Jenkins.

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each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61. The court does not find the submitted statement particular probative regarding defendant's liability for the act of an inmate and subsequent acts on the part of WCI personnel.

{¶13} 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.

{¶14} 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.

{¶15} 9) 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.

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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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
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Filed 2/22/07
Sent to S.C. reporter 4/5/07