

[Cite as *Eubank v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-2677.]

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

JAMES EUBANK

Plaintiff

v.

OHIO DEPT. OF REHAB. AND
CORRECTION

Defendant

Case No. 2006-07210-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On March 28, 2006, at approximately 8:30 p.m., plaintiff, James Eubank, an inmate incarcerated at defendant's Grafton Correctional Institution ("GCI"), was transferred from his cell to an isolation unit. Incident to this transfer, plaintiff's personal property was inventoried, packed, and delivered into the custody of GCI staff. Plaintiff asserted not all of his property was packed and several items were left in his cell. Plaintiff further asserted the property allegedly left in his cell was either discarded by GCI employee C/O Spain or stolen by unidentified inmates.

{¶2} 2) When plaintiff subsequently regained possession of the property that had been packed and stored under defendant's control, he complained several items were missing. Consequently, plaintiff filed this complaint seeking to recover \$893.75, the estimated replacement cost of the alleged missing or stolen property, plus \$25.00 for filing fee reimbursement. The filing fee was paid.

{¶3} 3) The property claimed by plaintiff as missing or stolen amounted to nearly 250 separate items, including clothing, food, toiletries, art supplies, utensils, and various miscellaneous articles.

{¶4} 4) Defendant denied liability in this matter. Defendant explained plaintiff was administratively transferred to an isolation unit on March 28, 2006, and his personal property was packed by GCI staff. Plaintiff was present in his cell during the entire time his property was being packed. Defendant related plaintiff signed the property inventory form, which was compiled at the time his property was packed, acknowledging the form contained a complete and accurate listing of his property. Defendant maintained all property packed on March 28, 2006, was subsequently returned to plaintiff's possession. Defendant denied any property was lost while under the control of GCI staff.

{¶5} 5) Defendant stated reasonable care was exercised by GCI personnel in packing plaintiff's property on March 28, 2006. Defendant contended plaintiff failed to offer evidence to prove he suffered a property loss as a result of any negligence on the part of GCI staff. Defendant related plaintiff was permitted to assist in the packing of his property on March 28, 2006. Defendant insisted all property packed on March 28, 2006, was subsequently returned to plaintiff's possession. Defendant submitted a copy of plaintiff's property inventory compiled on March 28, 2006. The inventory notes plaintiff was present during the packing of the listed property. The inventory is signed by plaintiff certifying the listed property represents a complete and accurate inventory of all his property items.

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{¶6} 6) Plaintiff filed a response. Plaintiff submitted a written statement from his former cellmate, Adam Thornton, who claimed he was present during the March 28, 2006, pack-up of plaintiff's property. Thornton recorded he noticed plaintiff's art supplies, craft supplies, and commissary items "were left in Unit A-4 at Officer Tomecko's (GCI packing Officer) [d]esk to be processed as contraband." Plaintiff also submitted a written statement from fellow inmate, Timothy Newell, who claimed he assisted in taking plaintiff's packed property to the GCI property vault on March 28, 2006. Newell noted he helped escort two locker boxes full of property, a laundry bag of state clothing, a television set, and a typewriter to the GCI vault. Newell also noted he saw a "large quantity of [plaintiff's] commissary property," along with boots, shoes, art supplies, and craft supplies, placed at the side of Officer Tomecko's desk.

CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 3) 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.

{¶10} 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.

{¶11} 5) Plaintiff's failure to prove delivery of certain property items to defendant

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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.

{¶12} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost or 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

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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RDK/laa
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