

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

ORSON WELLS

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2007-04672-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On or about February 15, 2006, plaintiff, Orson Wells, an inmate at defendant, Ohio State Penitentiary (“OSP”), was assigned to a segregation unit due to an institutional rule violation. Plaintiff explained that access to his personal property was restricted because of his reassignment. Plaintiff noted when he was released from segregation he regained possession of all his property.

{¶2} 2) On or about May 26, 2006, OSP employee, Officer Whitman, entered plaintiff’s cell and confiscated ten cassette tapes. Plaintiff stated he subsequently discovered the confiscated tapes were destroyed pursuant to a forfeiture order.

{¶3} 3) On September 11, 2006, plaintiff purchased a new television set, remote control, and adapter. The new television set was equipped with a remote control. Apparently, at the time plaintiff purchased the items, he effectively possessed two television sets, two remote controls, and two adapters. Defendant’s internal policy limits possession amount of these items to one. Plaintiff, therefore, decided to mail out his old television set and relinquish one remote control and one adapter to defendant. Plaintiff claimed he was informed by defendant’s personnel that the remote control and adapter he relinquished would be placed in storage in the OSP vault. The second adapter and remote control were apparently mailed from OSP and not kept in storage.

{¶4} 4) Plaintiff contended defendant had no authority to dispose of his cassette tapes. Additionally, plaintiff claimed his second remote control and adapter should not have been mailed from OSP. Consequently, plaintiff filed this complaint seeking to recover \$148.10, the estimated replacement cost of his ten cassette tapes, adapter, and remote control. Plaintiff submitted the \$25.00 filing fee and requests reimbursement of that amount along with his damage claim.

{¶5} 5) Defendant claimed plaintiff's cassette tapes and other property referred to in this action were mailed out of OSP. Defendant observed plaintiff authorized the mailing of certain property items from OSP on or about September 13, 2006. OSP employee, Sgt. M. Lashley, posted property at plaintiff's request on two separate occasions to two separate addresses. Postage costs were collected from plaintiff's inmate account to pay for the mailings. Defendant contended all of plaintiff's stored property was mailed from OSP to addresses designated by plaintiff. Also, defendant suggested the ten cassette tapes were forfeited pursuant to a court order. However, the tapes were not destroyed, but were mailed from OSP instead.

{¶6} 6) Plaintiff filed a response insisting he did not authorize the mailing of cassettes tapes, adapter, or remote control from OSP. Plaintiff explained he authorized and paid postage for the mailing of three photo albums in July 2006. Plaintiff further explained he also authorized the mailing of his old television set and four compact discs in September 2006. According to plaintiff, the television set and two compact discs were posted to one designated address and two other compact discs were posted to a second designated address. Plaintiff recalled he inferred the remainder of his property including his cassette tapes, adapter, and remote control were placed in storage and not mailed. Plaintiff submitted copies of two "Personal A/C Withdrawal" slips establishing funds were withdrawn from his inmate account to cover postage costs for mailing items. One slip dated September 13, 2006, for \$16.67 records, "insure tv \$200 add cost for." The second slip also dated September 13, 2006, for \$3.89 does not list property items mailed.

CONCLUSIONS OF LAW

{¶7} 1) The state cannot be sued for the exercise of any executive planning function involving the implementation of a policy decision characterized by a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68. Any decision made by defendant in ordering plaintiff to mail out his property is not actionable in this court.

{¶8} 2) 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.

{¶9} 3) 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.

{¶10} 4) 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.

{¶11} 5) 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.

{¶12} 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.

{¶13} 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶14} 8) Defendant is not responsible for property once it is shipped out of the facility. At that point, the property is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1989), 89-12968-AD; *Reynolds v. Lebanon Correctional Institution* (2001), 2001-03798-AD, jud; *Frazier v. Mansfield Correctional Inst.*, 2005-09375-AD, jud, 2006-Ohio-7276.

{¶15} 9) 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. Antill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particular persuasive.

{¶16} 10) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss 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.



Case No. 2007-04672-AD

- 5 -

MEMORANDUM DECISION

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

ORSON WELLS

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2007-04672-AD

Deputy Clerk Daniel R. Borchert

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:

Orson Wells, #148-660
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North

Columbus, Ohio 43229

RDK/laa

10/4

Filed 10/19/07

Sent to S.C. reporter 12/28/07