

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

ALLAN JAMES TOLBERT

Plaintiff

v.

LEBANON CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-06942-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 19, 2007, at approximately 1:00 p.m., plaintiff, Allan J. Tolbert, an inmate incarcerated at defendant, Lebanon Correctional Institution (“LeCI”), was involved in a fight with his cellmate, Inmate Peterson #262-328. Plaintiff related that after the fight was finished (duration five minutes) he was escorted from the cell range “2-G” by LeCI staff and Inmate Peterson was locked in the cell they shared, “2-G-17.” Plaintiff further related his television set, a Magnavox 2005 Smart Series, which had been stored in cell 2-G-17, was destroyed by Inmate Peterson at sometime after he was locked inside the cell. Plaintiff stated, “Inmate [P]eterson 262-328 smashed my T.V. and came down range stating to officer of institution that he had broke it.”

{¶ 2} 2) Plaintiff has implied his television set was completely destroyed as a proximate cause of negligence on the part of defendant. Consequently, plaintiff filed this complaint seeking to recover \$110.00, the replacement cost of a new set. The filing fee was paid. Plaintiff also claimed damages in the amount of \$15.00 for the alleged loss of a wristwatch.

{¶ 3} 3) Plaintiff filed a statement concerning his personal recollection of the events of June 19, 2007 including the property damage incident forming the basis of this claim. Plaintiff wrote that after he fought with Peterson in their cell he went onto the cell

range where he met LeCI employee, Officer Imfield, informed him of the fight, and requested a new cell assignment. According to plaintiff, Imfield then began to investigate the reported fight incident which Peterson, who was present on the range, disputed; characterizing the fight as a misunderstanding. Plaintiff related Officer Imfield, "then tried to handcuff Peterson #262-328 and he refused," prompting Imfield to order plaintiff to, "go down to the officer desk and wait." Plaintiff recalled as he walked down the range he heard Peterson and Imfield arguing, "concerning cuffing up." Plaintiff stated that upon hearing the verbal exchange between Imfield and Peterson he "turned back to go to the cell and told C/O Imfield that inmate Peterson #262-328 would break my T.V. because his (Peterson's) fell to the floor during the fight." According to plaintiff, Imfield responded by locking inmate Peterson inside cell 2-G-17. Furthermore, plaintiff recalled he was then handcuffed by Officer Imfield and physically escorted from the cell range. Plaintiff also recalled that while he was being escorted from the cell range he heard a "loud bang" and immediately assumed his television set had been broken by inmate Peterson. Plaintiff observed that after being escorted from the cell range he observed several LeCI staff go to cell 2-G-17, remove a handcuffed inmate Peterson from the cell, and escort him from the cell range. Plaintiff noted he heard Peterson admit he had broken the television set stored in cell 2-G-17. Plaintiff related, "I knew he (Peterson) would break my T.V. because he was left in the cell."

{¶ 4} 4) Defendant acknowledged plaintiff's television set was destroyed by inmate Peterson on June 19, 2007. However, defendant denied any liability in this matter, contending plaintiff has failed to offer any evidence to prove his television set was broken as a proximate cause of negligence on the part of LeCI personnel. Defendant explained plaintiff and his cellmate, Peterson, "got into a fight with each other," and Officer Imfield responded; first by handcuffing plaintiff and removing him from the cell. Then, according to defendant, when Peterson refused to submit to being handcuffed, "he was secured in the cell until assistance could arrive." Defendant noted Peterson destroyed plaintiff's television within moments after being locked inside the

cell. Defendant asserted this evidence establishes that Officer Imfield acted reasonably when confronted with a situation involving physical violence. Defendant contended the evidence presented does not show any LeCI personnel acted negligently under the circumstances in protecting plaintiff's property. Defendant maintained plaintiff failed to prove any negligent act or omission on the part of LeCI staff resulted in his property damage.

{¶ 5} 5) Additionally, defendant denied any liability for the alleged loss of a watch. Defendant asserted plaintiff failed to offer any evidence to support any allegation that his watch was damaged or lost while under the control of LeCI personnel.

{¶ 6} 6) Plaintiff filed a response insisting his television set was damaged as a proximate cause of negligence on the part of defendant, specifically LeCI employee Officer Imfield. Plaintiff asserted Imfield was negligent in failing to secure inmate Peterson and thereby preventing him from destroying the television set. Plaintiff believed both he and Peterson should have been handcuffed by Officer Imfield. Plaintiff pointed out his watch was broken during the fight with Peterson, apparently when Peterson hit him with "bunk rack pipe (iron)." Plaintiff stated the watch has been replaced and he has withdrawn his claim for that property item. Plaintiff's claim is now restricted to the value of the broken television set.

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) 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.

{¶ 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) 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) 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; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615; *Jenkins v. Richland Correctional Inst.*, Ct. of Cl. No. 2003-01768, 2003-Ohio-4483.

{¶ 12} 6) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Meniffee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 13} 7) "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court . . ." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d. 744, 2003-Ohio-5333, 798 N.E. 2d 1121, at ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; and *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 14} 8) Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App. 3d 132, 136, 20 OBR 166, 485 N.E. 2d 287. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St. 2d 310, 31 O.O. 2d 573, 209 N.E. 2d 142.

{¶ 15} 9) Plaintiff has failed to show any causal connection between the damages to his television set and any breach of a duty owed by defendant in regard to

Case No. 2007-06942-AD	- 5 -	ENTRY
------------------------	-------	-------

protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Tomblin v. London Correctional Inst.*, Ct. of Cl. No. 2005-03431-AD, 2005-Ohio-4859; *Madden v. Lebanon Correctional Inst.*, Ct. of Cl. No. 2006-06116-AD; jud, 2007-Ohio-1928.

Case No. 2007-06942-AD

- 6 -

ENTRY

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

ALLAN JAMES TOLBERT

Plaintiff

v.

LEBANON CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-06942-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:

Allan James Tolbert, #268-313
3791 State Route #63
Lebanon, Ohio 45036

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa
5/29
Filed 7/16/08
Sent to S.C. reporter 10/2/08