

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

CORNELIUS HARRIS

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-02215-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Cornelius Harris, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), alleged his television set was damaged by OSP employee, Sgt. Kleinknecht. Plaintiff filed this complaint seeking to recover \$109.00, the total replacement value of his television set. Payment of the filing fee was waived.

{¶ 2} 2) Plaintiff recalled he had been housed in a segregation unit at OSP and his personal property items, including his television set, were stored under the care of OSP staff. Plaintiff related that when he was released from segregation on October 26, 2007, his personal property was returned to his possession. Plaintiff pointed out his television set was returned to him by Sgt. Kleinknecht. Plaintiff stated “[s]everal inmates observed Sgt. Kleinknecht carelessly yanking and pulling my T.V. by the cord as it tangled with another T.V.’s cord.” Plaintiff noted he witnessed the alleged acts of Sgt. Kleinknecht. Plaintiff maintained the volume on his television set does not work and he attributes the malfunction to the alleged acts of Sgt. Kleinknecht. Plaintiff related he plugged in the set in his cell and it would not work. Then, according to plaintiff, Sgt.

Kleinknecht took the set to his office, returned with it later, plugged the set in and “after a while, he got the T.V. to come on.” Plaintiff noted he plugged the television in after Sgt. Kleinknecht left and the set produced a picture, but no volume.

{¶ 3} 3) Defendant acknowledged plaintiff’s television would not function properly when the set was plugged into an outlet in plaintiff’s cell. However, according to defendant, the television set did function when plugged into the outlet in Sgt. Kleinknecht’s office. Defendant asserted the outlets in plaintiff’s cell were defective, but worked after adjustments had been performed. Defendant denied plaintiff’s television set was damaged as a result of mishandling on the part of OSP personnel. Defendant explained that after the wall outlet in plaintiff’s cell was reset the television set functioned properly when plugged into the reset outlet. On December 18, 2007, defendant’s inspector of Institutional Services found in response to a grievance by plaintiff in regard to his television set that “[a]t this time the TV volume is inoperable.” Defendant contended plaintiff did not provide proof his television set was damaged by OSP personnel.

{¶ 4} 4) Plaintiff filed a response insisting his television set was damaged by OSP employee Sgt. Kleinknecht on October 26, 2007. Plaintiff related the outlet in his cell functioned properly advising that he plugged an adapter into the outlet and the adapter worked. Plaintiff contended defendant never conducted a proper investigation concerning the damage to his property and made excuses for the behavior of Sgt. Kleinknecht. Plaintiff reasserted his television set was damaged (no volume) when Sgt. Kleinknecht “yanked the cord.” Plaintiff did not establish how the act of pulling on a cord of a television set would result in the malfunctioning of the volume and affect only the volume function of the set.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 4) Plaintiff must produce evidence which affords a reasonable basis for the conclusion that 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.

{¶ 9} 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.

{¶ 10} 6) The trier of fact has discretion without constraint to believe all, part, or none of any witness statement presented. See *State v. Long* (1998), 127 Ohio App. 3d 328, 713 N.E. 2d 1. In the instant claim, the trier of fact does not find persuasive the statements plaintiff presented regarding how his television set was damaged.

{¶ 11} 7) 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.

{¶ 12} 8) Plaintiff has failed to show any causal connection between any damage to his television set and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

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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:

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RDK/laa
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