

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

CLYDE R. GOETZ

Plaintiff

v.

TOLEDO CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-03106-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Clyde R. Goetz, an inmate formerly incarcerated at defendant, Toledo Correctional Institution (“ToCI”), filed this complaint alleging his upper and lower partial plate dentures (“dentures”) were lost while under the control of ToCI staff. Plaintiff recalled he was transferred to a segregation unit at ToCI on December 17, 2007 and his personal property was packed and stored in the ToCI property vault. On December 24, 2007 plaintiff was released from segregation and he regained possession of his stored property. Plaintiff asserted his dentures were not among his returned property items and he has implied the dentures were lost while under the control of ToCI staff at sometime from the period of December 17, 2007 to December 24, 2007. Consequently, plaintiff filed this action seeking to recover \$2,150.00, the estimated replacement cost of his dentures. Payment of the filing fee was waived.

{¶ 2} 2) Defendant denied any liability in this matter contending plaintiff has failed to offer sufficient evidence to establish the dentures were lost while under the control of ToCI personnel. Defendant submitted copies of two of plaintiff’s property inventories dated November 27, 2007 and December 17, 2007. These property record

inventories compiled by ToCI staff do not list any dentures. Both property records bear plaintiff's signature. The November 27, 2007 signed records contains the notation above plaintiff's signature: "I certify that the above listed items are a complete and accurate inventory of all my property."

{¶ 3} 3) Plaintiff filed a response pointing out that his dentures were not listed on the November 27, 2007 property record due to the fact he was wearing them. Furthermore, plaintiff explained he had his dentures wrapped in toilet paper and stored the items in this manner at the time his property was packed on December 17, 2007. Therefore, plaintiff assumed the dentures were probably overlooked or discarded when his property was packed on December 17, 2007 incident to his transfer to segregation. Plaintiff acknowledged he did not possess a proper container to store his dentures.

CONCLUSIONS OF LAW

{¶ 4} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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 .

{¶ 9} 6) Plaintiff's failure to prove delivery of dentures to defendant 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.

{¶ 10} 7) 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, 39 O.O. 2d 366, 227 N.E. 2d 212, 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, 26 O.O. 2d 366, 197 N.E. 2d 548. The court does not find plaintiff's assertions particularly persuasive.

{¶ 11} 8) Plaintiff has failed to prove, by a preponderance of the evidence, his dentures were lost, discarded, or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Clyde R. Goetz
614 Earl Street
Toledo, Ohio 43605

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
10/15
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