

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

TONY L. NELMS, SR.

Plaintiff

v.

ROSS CORRT. INST.

Defendant

Case No. 2008-04137-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On April 2, 2008, plaintiff, Tony L. Nelms, Sr., filed a complaint against defendant, Ross Correctional Institution. Plaintiff alleges on March 24, 2008 at approximately 4:00 p.m., defendant's agents negligently unlocked his cell door. During this time plaintiff alleges he was "uncounscience" [sic] which resulted in the theft of his commissary items by individuals unknown. Plaintiff seeks damages in the amount of \$3.81 for the loss of his food stuffs which he asserts were stolen as the result of negligence on the part of defendant's agents. The plaintiff was not required to submit the filing fee.

{¶ 2} Defendant filed a motion to dismiss. Defendant stated the items were not secured in his locker box. Even though they had no duty to search for indistinguishable commissary items, a search was conducted, however, the items could not be located. Accordingly, defendant asserted plaintiff's claim should be dismissed for failure to state a claim upon which relief can be granted.

{¶ 3} Plaintiff has not responded to defendant's motion to dismiss.

{¶ 4} The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 5} Defendant is not responsible for the 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.

{¶ 6} The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 7} In order for plaintiff to be compensated for his claimed loss he must show, by a preponderance of the evidence, defendant's agents knew or had reason to know that another person would enter plaintiff's cell during his absence, or in this case when he was asleep, with the intent to steal property belonging to the prisoner. This the plaintiff has failed to show. *Warren v. State* (1987), 36 Ohio Misc. 2d 18, 521 N.E. 2d 861.

{¶ 8} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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ENTRY

Tony L. Nelms, Sr.
3399 Quaker Road
Columbus, Ohio 43207

Stephen A. Young, Staff Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

DRB/laa
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