

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

ROBERT MARTIN

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

Defendant

Case No. 2008-06504-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} “1) Plaintiff, Robert Martin, an inmate incarcerated at defendant’s North Central Correctional Institution (“NCCI”), stated his locked locker box was broken into after March 4, 2008 and his Riddell Tennis shoes and a set of headphones were stolen. Plaintiff pointed out he was transferred from NCCI to The Ohio State University Hospital March 4, 2008 and regained possession of his property on March 11, 2008, when he returned to NCCI.

{¶ 2} “2) Plaintiff advised that his locked locker box was again broken into on April 28, 2008 and several items he had purchased at the NCCI commissary were stolen.

{¶ 3} “3) Plaintiff contended that his property was stolen as a proximate cause of negligence on the part of NCCI staff in failing to provide adequate security to protect inmate property from inmate thieves. Plaintiff filed this complaint seeking to recover damages in the amount of \$94.16 for property loss, plus \$12.00 “for conscious suffering of mind and body” attendant to property loss. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that amount along with his damage claim.

{¶ 4} “4) On March 13, 2008, plaintiff filed “Inmate Property Theft/Loss Report(s)” with defendant regarding theft of his headphones on March 4, 2008 and his tennis shoes. According to both “Inmate Property Theft/Loss Report(s)” no action was taken by NCCI staff to investigate the reported thefts. On April 28, 2008, plaintiff filed an additional “Inmate Property Theft/Loss Report” claiming commissary purchases had been stolen from his locker box. NCCI personnel, in response to this report, conducted a prompt but fruitless search for the reported stolen articles.

{¶ 5} “5) Defendant explained plaintiff’s property was packed on March 5, 2008 incident to his March 4, 2008 transfer to The Ohio State University Hospital. Defendant denied packing either plaintiff’s tennis shoes or his headphones. Defendant pointed out plaintiff’s shoes “were listed as already missing prior to the pack-up.” Defendant denied liability in this matter. Defendant contended no liability can attach when evidence does not establish that NCCI personnel received delivery of plaintiff’s shoes and headphones.

{¶ 6} “6) Furthermore, defendant denied liability for the theft of plaintiff’s commissary items on April 28, 2008. Defendant asserted plaintiff failed to prove any duty of care owed to him was breached that proximately resulted in his property loss.

{¶ 7} “7) Plaintiff filed a response contending defendant’s delay until March 5, 2008 in packing his property facilitated the theft of his shoes and headphones and constituted actionable negligence. Additionally, plaintiff contended defendant was negligent in failing to offer him access to an adequate lock to secure his valuables in his locker box. Plaintiff maintained the lock provided was of inferior quality and led to the theft of his commissary purchases.

CONCLUSIONS OF LAW

{¶ 8} “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.

{¶ 9} “2) 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} “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.

{¶ 11} “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.

{¶ 12} “5) 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 *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 13} “6) “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, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 14} “7) The allegation that a theft may have 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 or ordinary or reasonable care. *Williams*.

{¶ 15} “8) Defendant is not responsible for thefts committed by 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.

{¶ 16} “9) The fact defendant supplied plaintiff with a locker box 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.

{¶ 17} “10) Plaintiff may show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Marion Correctional Institution* (1981), 81-05202-AD.

{¶ 18} “11) Generally, defendant has a duty to conduct a search for plaintiff’s property within a reasonable time after being notified of the theft. *Phillips v. Columbus*

Correctional Facility (1981), 79-0132-AD.

{¶ 19} “12) Plaintiff has failed to prove, by a preponderance of the evidence, his commissary items were stolen and unrecovered as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 20} “13) This court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056.

{¶ 21} “14) Negligence on the part of defendant has been shown in respect to the issue of property protection of plaintiff’s tennis shoes and headphones. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD, jud.

{¶ 22} “15) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239, 577 N.E. 2d 160.

{¶ 23} “16) Defendant is liable to plaintiff for property loss in the amount of \$38.71, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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NORTH CENTRAL CORRECTIONAL INSTITUTION

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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 plaintiff in the amount of \$63.71, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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