

Court of Claims of Ohio

The Ohio Judicial Center
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NATHAN A. GRAHAM

Plaintiff

v.

MANSFIELD CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-07314

Judge J. Craig Wright
Magistrate Steven A. Larson

ENTRY GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On July 18, 2008, defendant filed a motion to transfer plaintiff's case to the administrative docket. On July 31, 2008, plaintiff filed a response. On August 11, 2008, plaintiff filed a supplement to his response. On August 25, 2008, the court issued an entry denying defendant's motion to transfer for lack of evidentiary support. On September 15, 2008, defendant filed a "renewed" motion to transfer plaintiff's case to the administrative docket. On October 2, 2008, plaintiff filed a combined motion to strike and memorandum contra defendant's motion. On October 6, 2008, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On October 7, 2008, defendant filed a response to plaintiff's motion to strike. On October 14, 2008, defendant filed a response to plaintiff's motion for summary judgment.

{¶ 2} R.C. 2743.10 states, in part, that "[c]ivil actions against the state for two thousand five hundred dollars or less shall be determined administratively by the clerk of the court of claims * * *."

{¶ 3} Plaintiff is currently an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that employees of defendant are responsible for the loss or destruction of nine pages of original photographic proofs which plaintiff values at more than \$25,000 due to their potential commercial use. Plaintiff further alleges that he obtained the proofs in the settlement of a lawsuit and that he estimates the value of the proofs at \$225,000. Defendant admits that it lost plaintiff's property, but argues that it is not worth more than \$2,500 and that plaintiff's action must be determined administratively.

{¶ 4} In his motion to strike, plaintiff argues that defendant's renewed motion is redundant in that the motion does not contain any information that was not contained in defendant's prior motion. However, defendant's renewed motion contains additional evidence in the form of an affidavit of D. Butts. Accordingly, plaintiff's motion to strike is DENIED. Butts' affidavit states:

{¶ 5} "1. I am currently employed as a full-time employee by the Department of Rehabilitation and Correction (DRC) as a Case Manager at the Mansfield Correctional Institution (ManCI).

{¶ 6} "2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit.

{¶ 7} "* * *

{¶ 8} "4. On or about June 25, 2007, I went to Ms. Bethea's office to retrieve nine pages of photocopies of photographs depicting various nude poses of two young women for [plaintiff]. These photocopies were not the originals as the originals had been sent out of the institution by [plaintiff]. These photocopies were merely copies of the originals.

{¶ 9} "5. I checked in the normal place where these photocopies were stored, which was an envelope on top of Ms. Bethea's storage shelf. However, when I opened the envelope, the photocopies were not there.

{¶ 10} “* * *

{¶ 11} “11. Again, [plaintiff] sent the original copies of these photographs out of the institution and therefore, this matter only addresses the missing photocopies of the photographs and not the original photographs themselves.”

{¶ 12} Plaintiff provided his own affidavit in support of his motion for summary judgment, wherein he states:

{¶ 13} “2. That [defendant] obtained property belonging to me that consisted of approximately 87 copyright protected photographs depicting various nude poses of two different models, which was part of a \$225,000 lawsuit settlement; and,

{¶ 14} “* * *

{¶ 15} “4. That [defendant’s] staff held the said property in a secured, locked office located in a center-vest which is not accessible to inmates; and,

{¶ 16} “5. That [defendant] has issued a theft/loss report and an incident report after allegedly conducting an investigation, and that said incident report states that the bailed property in question was ‘missing,’ hence, lost or stolen.”

{¶ 17} “When prison authorities obtain possession of an inmate’s property, a bailment relationship arises between the correctional facility and the inmate. By virtue of this relationship, [defendant] must exercise ordinary care in handling and storing appellant’s property.” (Citations omitted.) *Triplett v. S. Ohio Corr. Facility*, Franklin App. No. 06AP-1296, 2007-Ohio-2526, ¶7. However, “[defendant] does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but it does have the duty to make reasonable attempts to protect such property.” *Id.*

{¶ 18} Based upon the affidavits provided, the court finds that questions of fact exist as to the value of plaintiff’s property. Accordingly, defendant’s motion to transfer is DENIED. Additionally, based upon defendant’s admission that it lost plaintiff’s property, the only reasonable conclusion to be drawn from the evidence is that defendant failed in its duty of care to plaintiff. Accordingly, plaintiff’s motion from summary judgment is

GRANTED as to liability. As a result, the court's September 23, 2008 scheduling entry is hereby VACATED, and the case will be set for trial on the issue of damages.

J. CRAIG WRIGHT
Judge

cc:

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MR/cmd
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