

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

MICHAEL CLOUGH

Plaintiff

v.

LONDON CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-08523-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 13, 2008, plaintiff, Michael Clough, an inmate incarcerated at defendant, London Correctional Institution (LoCI), suffered property loss when his wall locker was broken into and several items were stolen. Plaintiff pointed out that the property items stolen included a Sony CD player/radio, a set of Koss headphones, twenty-seven compact discs, food stuffs, and multiple items that he had recently purchased from the LoCI commissary.

{¶ 2} 2) After plaintiff reported the theft to LoCI staff, camera footage of plaintiff's living area was reviewed and the thief was identified and promptly transferred to a segregation unit. Apparently none of the stolen property was recovered.

{¶ 3} 3) Plaintiff implied that defendant should bear responsibility for his property loss. Plaintiff has consequently filed this complaint seeking to recover \$693.06, the estimated value of the stolen unrecovered property items. The filing fee was paid.

CONCLUSIONS OF LAW

{¶ 4} 1) 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* (1986), 84-02425. Plaintiff must show that defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 5} 2) Defendant is not responsible for 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} 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.

{¶ 7} 4) 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.

{¶ 8} 5) 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.

{¶ 9} 6) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant breached that duty, and that defendant's breach proximately caused his damages. *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.

{¶ 10} 7) "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.

{¶ 11} 8) The fact that defendant supplied plaintiff with a locker and had access to a 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.

{¶ 12} 9) Plaintiff has failed to prove, by a preponderance of the evidence, that

he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. London Correctional Inst.* (2001), 2001-03135-AD; *Mitchell v. London Correctional Inst.*, Ct. of Cl. No. 2004-01770-AD, 2004-Ohio-3270.

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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.

MILES C. DURFEY

Clerk

Entry cc:

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4/22
Filed 5/29/09
Sent to S.C. reporter 9/29/09