

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

JEFF T. HOLTON

Plaintiff

v.

WARREN CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-09511-AD

Judge Joseph T. Clark

Magistrate Steven A. Larson

DECISION

{¶ 1} On January 26, 2009, defendant filed a motion for partial summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to

have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that on or about October 16, 2006, he was placed in disciplinary segregation and his personal property was "packed up" by Corrections Officer (CO) Andrew Tribbey. Plaintiff states in his complaint that after the pack-up and his transfer, Tribbey presented him with an inventory sheet listing his property and asked him to sign it, in accordance with defendant's policy. Plaintiff alleges that he noticed that several items of his personal property were not listed on the inventory sheet and that he refused to sign the form. Plaintiff claims that when he later attempted to remedy this situation through defendant's administrative grievance procedure, the property vault officer, CO Charles Coy, and the Institutional Inspector, Doug Luneke, failed to properly investigate his complaint or to locate his lost property. Plaintiff requests an immunity determination regarding Tribbey, Coy, and Luneke pursuant to R.C. 9.86 and 2743.02(F).

{¶ 5} Defendant argues that Tribbey, Coy, and Luneke were acting within the course and scope of their employment at all times relevant to plaintiff's complaint and are therefore entitled to civil immunity.

{¶ 6} In support of its motion, defendant filed the affidavits of Tribbey, Coy, and Luneke. Tribbey states in his affidavit:

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

{¶ 8} "* * *

{¶ 9} "5. I conducted a pack up of [plaintiff's] personal property on October 16, 2006, after he was sent to segregation.

{¶ 10} "[6]. The pack up of [plaintiff's] cell was conducted in order to fulfill my duties as a correctional officer at [defendant].

{¶ 11} "[7]. I am required to perform cell pack ups when inmates are sent to segregation as part of my job duties as a Correctional Officer.

{¶ 12} "[8]. [Plaintiff] refused to sign the Property Record Disposition Form, even though he verbally acknowledged that I accounted for all of his personal property.

{¶ 13} “[9]. At no time did I act with a malicious purpose, in bad faith, or in a wanton or reckless manner when conducting the pack up of [plaintiff’s] cell on October 16, 2006.

{¶ 14} “[10]. I did not, at any time during [plaintiff’s] pack up, display a wanton disregard for the Administrative Rules and Policies of the Ohio Department of Rehabilitation and Correction.

{¶ 15} “[11]. At all times relevant to this case, I was acting in the course and scope of my employment.”

{¶ 16} Coy states, in part:

{¶ 17} “3. I have personal knowledge and I am competent to testify to the facts contained in this Affidavit.

{¶ 18} “* * *

{¶ 19} “5. As part of my job duties, I attempted to locate the property [plaintiff] identified in his November 8, 2006, grievance.

{¶ 20} “6. I did not find [plaintiff’s] property when I searched the Property Room, nor did I find a Property Inventory Form in [plaintiff’s] file for his October 16, 2006 pack up.

{¶ 21} “7. I did not, at any time, act with a malicious purpose, in bad faith, or in a wanton or reckless manner when attempting to locate the property [plaintiff] identified as being missing.

{¶ 22} “8. I did not, at any time, display a wanton disregard for the Administrative Rules and Policies of the Ohio Department of Rehabilitation and Correction when attempting to locate the property [plaintiff] identified as being missing.

{¶ 23} “9. At all times relevant to this case, I was acting in the course and scope of my employment.”

{¶ 24} Finally, Luneke states in his affidavit:

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

{¶ 26} “* * *

{¶ 27} “4. I have personally inspected and reviewed [defendant’s] files concerning [plaintiff].

{¶ 28} “5. At the time of this complaint being filed my job duties were Inspector, I investigated and responded to inmate grievances, including inmate property claims.

{¶ 29} “6. On November 8, 2006, [plaintiff] filed a grievance stating that while he was serving time in segregation, another inmate impersonated him and checked his property out of the vault.

{¶ 30} “7. [Plaintiff’s] grievance stated that he did not sign his pack-up sheet because there were missing items.

{¶ 31} “8. Thereafter, I investigated the allegations set forth in [plaintiff’s] grievance. My investigation uncovered the following:

{¶ 32} “9. Notes from [Tribbey] located on [plaintiff’s] Property Record Disposition Form state that [plaintiff] refused to sign the pack-up slip, but that [plaintiff] verbally acknowledged that no personal items are missing.

{¶ 33} “10. Although [plaintiff’s] Property Record Disposition indicated that he owned a Zenith television, at the time of my investigation, [plaintiff] was not able to produce proper receipts of the items or otherwise prove ownership.

{¶ 34} “11. At no time did I act with a malicious purpose, in bad faith, or in a wanton or reckless manner when conducting the investigation of [plaintiff’s] lost property.

{¶ 35} “12. I did not, at any time throughout my investigation of this case, display a wanton disregard for the Administrative Rules and Policies of the Ohio Department of Rehabilitation and Correction.

{¶ 36} “13. At all times relevant to this case, I was acting in the course and scope of my employment.”

{¶ 37} R.C. 9.86 provides, in pertinent part:

{¶ 38} “[N]o officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer’s or employee’s actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.”

{¶ 39} The issue whether Tribbey, Coy, and Luneke are entitled to immunity is a question of law. *Nease v. Medical College Hosp.*, 64 Ohio St.3d 396, 1992-Ohio-97, citing *Conley v. Shearer*, 64 Ohio St.3d 284, 292, 1992-Ohio-133. The question

whether they acted outside the scope of their employment, or with malicious purpose, in bad faith, or in a wanton or reckless manner is one of fact. *Tschantz v. Ferguson* (1989), 49 Ohio App.3d 9. Plaintiff bears the burden of proving that the state employees should be stripped of immunity. *Fisher v. University of Cincinnati Med. Ctr.* (Aug. 25, 1998), Franklin App. No. 98AP-142.

{¶ 40} Civ.R. 56(E) provides, in part:

{¶ 41} “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶ 42} Plaintiff did not respond to defendant’s motion for summary judgment.

{¶ 43} Based upon the undisputed affidavit testimony, the court finds that Andrew Tribbey, Charles Coy, and Doug Luneke are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case. Accordingly, defendant’s motion for partial summary judgment shall be granted.

{¶ 44} On another matter, plaintiff attached to his complaint a list of the items that were allegedly lost as a result of defendant’s negligence and the replacement cost of each item. The total replacement cost of the items listed is approximately \$1,500.

{¶ 45} R.C. 2743.10 provides, 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 * * *.”

{¶ 46} The court finds that the value of plaintiff’s property allegedly lost by defendant does not exceed \$2,500. Accordingly, the case shall be transferred to the administrative docket where it shall be processed pursuant to R.C. 2743.10(A).



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JUDGMENT ENTRY

For the reasons set forth in the decision filed concurrently herewith, defendant's motion for partial summary judgment is GRANTED and the court finds that Andrew Tribbey, Charles Coy, and Doug Luneke are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

The court also finds that the value of plaintiff's property that was allegedly lost by defendant does not exceed \$2,500. Accordingly, the case is TRANSFERRED to the administrative docket where it shall be processed pursuant to R.C. 2743.10(A).

JOSEPH T. CLARK
Judge

cc:

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MR/cmd
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