

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

MIKE ANDREWS

Plaintiff

v.

ALLEN CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-09732-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Mike Andrews, an inmate incarcerated at defendant, Allen Correctional Institution (“ACI”), asserted several property items were stolen from his locked locker box on April 15, 2008 during a time he was away from his “secured 4-man cell.” Plaintiff related that not only was his locker box secured when he left his cell at 7:00 a.m. on April 15, 2008, but he also locked his cell door when he left for a “routine work-call.”

{¶ 2} 2) ACI staff conducted a prompt, but fruitless search for plaintiff’s property after he reported the theft at approximately 11:30 a.m. on April 15, 2008. Plaintiff claimed the stolen property included two compact discs, beard trimmers, a CD player, two jars of coffee, four bags of coffee, a surge protector, three sausages, one adapter, one tube of toothpaste, two packs of chewing gum, and three bags of microwave popcorn.

{¶ 3} 3) Plaintiff contended his property was stolen as a proximate cause of negligence on the part of defendant in failing to give him access to a heavy duty lock he

could use to secure his locker box. Plaintiff seeks damages for property loss in the amount of \$103.24. Plaintiff also requested \$1.30 for copying expenses, which are not compensable in a claim of this type. Plaintiff's damage claim is limited to \$103.24. Payment of the \$25.00 filing fee was waived.

{¶ 4} 4) Defendant denied liability for any property loss plaintiff may have suffered. Defendant contended plaintiff failed to prove ACI staff breached any duty of care owed to protect or recover his property. Defendant maintained adequate searches were conducted for plaintiff's property upon being informed of the theft. Furthermore, defendant argued any duty owed to plaintiff in regard to property protection was discharged when he was given access to a locker box and lock to secure his property.

{¶ 5} 5) Plaintiff filed a response contending his property loss was proximately caused by negligence on the part of defendant in failing to provide him access to a heavy duty lock to properly secure the property stored in his locker box.

CONCLUSIONS OF LAW

{¶ 6} 1) 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} 2) 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} 3) 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} 4) The fact defendant supplied plaintiff with a locker 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.

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

{¶ 11} 6) 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.

{¶ 12} 7) Plaintiff must produce evidence which affords a reasonable basis for the conclusion that 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.

{¶ 13} 8) 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.

{¶ 14} 9) "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.

{¶ 15} 10) The fact defendant supplied plaintiff with a locker box and 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. Defendant is not required to take extraordinary measures to provide inmates means to secure their property.

{¶ 16} 11) Plaintiff has failed to prove, by a preponderance of the evidence, that his property was stolen as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD; *Hall v. London Correctional Inst., Ct. of Cl. No. 2008-04803-AD, 2008-Ohio-7088.*

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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4/28
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