

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

RUSS RICHES, SR.

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-09821-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 28, 2008, plaintiff, Russ Riches, Sr., an inmate formerly incarcerated at defendant's Pickaway Correctional Institution ("PCI"), was transferred from PCI to The Ohio State University Medical Center for treatment. Plaintiff stated that "[p]rior to transport, I correctly secured all my personal property within my locker box and correctly applied and secured my master padlock onto the locker box." Incident to plaintiff's medical transfer, PCI staff compiled a property inventory of plaintiff's property which had been stored in the locked locker box. Plaintiff contended PCI personnel did not secure his locker box containing his property when he was transferred.

{¶ 2} 2) Plaintiff asserted that at sometime after he was transferred, an unknown individual or individuals stole several items of personal property from his unsecured locker box. Plaintiff related the items stolen included: one bath towel, one washcloth, one hooded sweatshirt, eleven magazines, ten cigars, fourteen bags of noodles, three bags of coffee, two containers of sugar cubes, two containers of peanut

butter, one container of white rice, one can of chili, one can of roast beef, one can of loose tobacco, one processed cheese, one bag of cookies, one hot pickle, one envelope, and one bag of animal crackers. Plaintiff filed this complaint seeking to recover \$136.08, the estimated replacement cost of his alleged stolen property. Plaintiff argued his property was stolen as a proximate cause of negligence on the part of defendant in failing to properly protect the property after he was transferred to The Ohio State University Medical Center. Payment of the \$25.00 filing fee was waived.

{¶ 3} 3) Plaintiff reported the property theft on July 28, 2008, one month after he was transferred and the theft was alleged to have occurred. PCI staff performed a perfunctory but fruitless search for plaintiff's property.

{¶ 4} 4) Defendant filed an investigation report admitting liability for the loss of the bulk of the items claimed and acknowledging plaintiff suffered damages in the amount of \$91.38. Defendant denied liability for the claimed loss of a bath towel, washcloth, sweatshirt, and cigars. Defendant asserted no verification was submitted to prove plaintiff actually owned these items.

{¶ 5} 5) Plaintiff filed a response insisting he owned all the property claimed including a bath towel, washcloth, sweatshirt, and cigars. Plaintiff asserted he is entitled to the full damage amount claimed, \$136.08.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 5) The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07094-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 11} 6) 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.

{¶ 12} 7) Negligence on the part of defendant has been shown in respect to the loss of all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 13} 8) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court finds plaintiff's assertions persuasive regarding the fact he owned all the items claimed.

{¶ 14} 9) Negligence on the part of defendant has been shown in respect to the issue protecting plaintiff's property after the medical transfer. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD, jud.

{¶ 15} 10) 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.

{¶ 16} 11) Defendant is liable to plaintiff for property loss in the amount of \$136.08.

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor

Case No. 2006-03532-AD

- 5 -

MEMORANDUM DECISION

Case No. 2006-03532-AD

- 5 -

MEMORANDUM DECISION

Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RUSS RICHES, SR.

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-09821-AD

Deputy Clerk Daniel R. Borchert

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 \$136.08. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Russ Riches, Sr.
P.O. Box 102
Perrysburg, Ohio 43552-0102

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
4/29
Filed 5/12/09
Sent to S.C. reporter 8/21/09