

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

IAN T. WACKENTHALER

Plaintiff

v.

CHILLICOTHE CORRECTIONS INSTITUTION

Defendant

Case No. 2008-10200-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Ian T. Wackenthaler, an inmate incarcerated at defendant, Chillicothe Correctional Institution (CCI), filed this action alleging his personal property was stolen on June 13, 2007 as a proximate cause of negligence on the part of CCI staff in failing to provide adequate security to inhibit thefts. Plaintiff recalled he returned from work to his housing unit at approximately 3:43 p.m. on June 13, 2007 and discovered multiple property items had been stolen from his locked locker box. After discovering the theft, plaintiff requested CCI personnel review surveillance camera footage in an attempt to ascertain the identity of the thief. Plaintiff asserted he was told the surveillance cameras in his housing unit were either “not working all day and the tapes were totally blank” or “[t]he cameras were turned on but the video that was (captured) was the railing along the upper range” of the housing unit. None of plaintiff’s reported stolen property was recovered, despite the fact defendant conducted a prompt search for the property.

{¶ 2} 2) Plaintiff noted his stolen property included twenty-three compact discs, two pairs of shorts, one t-shirt, one compact disc player (JWIN) with adapter, one

bag of tobacco, and one box of cigarette tubes. Plaintiff also noted his combination lock was broken. Plaintiff requested reimbursement for property loss and damage in the amount of \$456.54. Additionally, plaintiff requested compensation for postage and copying expenses incurred in prosecuting this claim. Postage and copying expenses are not compensable and are consequently denied. Plaintiff's damage claim is limited to \$456.54. The filing fee was paid.

{¶ 3} 3) Defendant denied plaintiff's property was stolen as a proximate cause of any negligent act or omission on the part of CCI staff. Defendant explained the theft report "was investigated, a search was conducted, inmates in the living area were interviewed, but the property was not located." Defendant asserted any duty owed to plaintiff was discharged when he was provided with a lock and locker box in which to secure his valuables.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 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) 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.

{¶ 8} 5) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 9} 6) In order to prevail, plaintiff must prove, by a preponderance of the

evidence, that defendant owed him a duty, that it 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.

{¶ 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 allegation that a theft may have 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*, supra.

{¶ 12} 9) 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.

{¶ 13} 10) The fact that defendant supplied plaintiff with a locker box 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. *Andrews v. Allen Correctional Inst.* (2009), 2008-09732-AD, 2009-Ohio-4268.

{¶ 14} 11) Plaintiff has failed to prove, by a preponderance of the evidence, that any of his property was stolen as a proximate result of any negligent conduct attributable to 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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RDK/laa
9/30
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