

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 STANSELL

Plaintiff

v.

RICHLAND CORRECTIONAL INST.

Defendant

Case No. 2008-10277-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Michael Stansell, an inmate formerly incarcerated at defendant, Richland Correctional Institution (RiCI), asserted that several items of personal property he had stored in his locker box were stolen either during or immediately after RiCI personnel conducted a shakedown search on April 24, 2008. Plaintiff related that his GPX radio/compact disc player, a compact disc carrying case, a set of Koss Pro headphones, and an adapter were stolen incident to the April 24, 2008 shakedown search. Plaintiff implied that his property was stolen due to the fact RiCI staff left his locker box unsecured after it was searched.

{¶ 2} 2) Plaintiff contended that RiCI staff failed to conduct any type of search for his property after he reported the items had been stolen. Furthermore, plaintiff contended that no RiCI employee would review any video tape of his living area to determine the identity of the individual who stole the property from his locker box. Plaintiff asserted that his property was stolen as a proximate cause of negligence on the part of RiCI personnel in failing to protect his property or to make any type of attempt to

recover his property after a theft was reported. Plaintiff filed this complaint seeking to recover \$94.50 in damages for property loss. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Defendant acknowledged that plaintiff's living area was searched on April 24, 2008. However, defendant denied that plaintiff's locker box was left unsecured after the search was conducted. Defendant explained that RiCI personnel actively investigated reports of many thefts in plaintiff's living area and conducted many searches looking for stolen property, but did not recover any property owned by plaintiff. Defendant specifically denied that any RiCI employee opened plaintiff's locker box during the April 24, 2008 search. Defendant submitted a copy of the "Inmate Property Theft/Loss Report (Theft Report) compiled at the time that plaintiff informed RiCI staff of his property loss. According to the Theft Report, plaintiff reported the loss on May 2, 2008, eight days after the alleged loss. It was noted that on the Theft Report that the property stolen included "1 CD player/case, 1 headphones, (and) 1 adapter." Search action taken involved searching plaintiff's living area.

{¶ 4} 4) Plaintiff filed a response insisting that defendant never conducted a search for his property. Plaintiff also stated that he attempted to file a Theft Report several times after initially discovering his loss, but defendant's employees kept telling him to "come back later to file one." Plaintiff related that defendant is aware of multiple thefts in his living area, but neglects to take any action to protect inmate property.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 6) 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.

{¶ 11} 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.

{¶ 12} 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* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 13} 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.

{¶ 14} 10) The fact 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.

{¶ 15} 11) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD.

{¶ 16} 12) 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.

MILES C. DURFEY
Clerk

Entry cc:

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