

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

CHUCK REARDON

Plaintiff

v.

NORTH CENTRAL CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-10960-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 12, 2008, plaintiff, Chuck Reardon, an inmate incarcerated at defendant, North Central Correctional Institution (“NCCI”), was transferred from the NCCI general population to a segregation unit. Plaintiff’s personal property was inventoried, packed and delivered into defendant’s custody incident to the transfer. Furthermore, NCCI personnel confiscated multiple items of property from plaintiff’s possession at the time he was transferred. Plaintiff apparently possessed property items in excess of volume limitations (2.4 cubic feet) set by defendant’s internal regulations. The confiscated property was declared contraband and plaintiff was issued a “Conduct Report” for contraband possession.

{¶ 2} 2) Plaintiff submitted copies of the Contraband Control Slips, defendant issued when the property was confiscated on March 13, 2008 and transferred to the NCCI contraband vault. According to the notations on the Contraband Control Slips the following items were confiscated: six packs of tuna, two chili beans, four pastries, twenty-seven Ramen soups, one bag of tobacco, three containers of drink mix, one

squeeze cheese, four sausages, one dill pickle, one pepperoni, one and one half bags of chips, one book, twelve oatmeal pies, one master lock, one skin cream, one sport cup. one calculator, one cheese, one sewing kit, one beard trimmer, five folders, three tablets, two plastic cups, one ruler, one art pad, three ear bud sets, one bag of laundry soap, one petroleum jelly, eight Playboy magazines, nine legal envelopes, one bag of assorted (letters?), headphones, one journal, sunglasses, one television antenna and adapter, one fan, two headphone cords, one pair of scissors, one towel, two blankets, and one plastic tub lid. Plaintiff claimed his letters, legal mail, receipts, trial transcript, and other papers were confiscated in addition to the items that were recorded as confiscated. Plaintiff believed his property was confiscated "as a form of retaliation." Plaintiff related that he advised NCCI staff that he wanted his confiscated property mailed to his home residence; but defendant discarded all the confiscated property. Plaintiff made some reference about being denied due process rights. Plaintiff filed this complaint seeking to recover \$1,818.97, the estimated replacement value of the confiscated property which plaintiff claims NCCI personnel discarded without any authority. Plaintiff submitted a copy of the "Conduct Report" he was issued for possessing excess property. The copy of the submitted "Conduct Report" bears the printed notation "Send Home." Plaintiff submitted a copy of another document titled "Notification of Action by Hearing Officer Rules Infraction Board (RIB)." This document references a disposition action taken regarding plaintiff's confiscated property and carries the notation: "Confiscate all items refused to sign mail out slip." Plaintiff paid the \$25.00 filing fee to pursue this action.

{¶ 3} 3) Defendant acknowledged all of plaintiff's property confiscated by NCCI staff was subsequently destroyed. Defendant explained plaintiff was issued a "Conduct Report" for possession of contraband and subsequently was ordered by a Hearing Officer to either authorize the mailing of the confiscated property or have the seized property destroyed. Defendant maintained plaintiff refused to authorize the mailing of the confiscated property and the items were consequently destroyed. Defendant stated plaintiff "was clearly given an opportunity to mail the (seized) items home and refused to comply with the direction he was given and on 3/27/08 the (plaintiff's) property was destroyed."

CONCLUSIONS OF LAW

{¶ 4} 1) The issues grounded in plaintiff's action involve denial and delay in due process for a property deprivation. This court lacks subject matter jurisdiction over alleged violations of constitutional rights and claims arising under Section 1983, Title 42, U.S. Code. *Bleicher v. Univ. of Cincinnati* (1992), 78 Ohio App. 3d 302, 604 N.E. 2d 783. In the instant claim plaintiff chose the wrong forum to pursue this action.

{¶ 5} 2) Concomitantly, any claims involving retaliatory conduct are not cognizable in this court. In *Deavors v. Ohio Dept. of Rehab. and Corr.* (May 20, 1999), Franklin App. No. 98AP-1105, the court held that an inmate's claims regarding retaliatory conduct are properly classified as constitutional claims actionable under Section 1983, Title 42, U.S. Code.

{¶ 6} 3) 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} 4) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶ 8} 5) 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} 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 *Meniffee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 10} 7) Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶ 11} 8) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 12} 9) By refusing to authorize the mailing of his property in effect abandoned the withheld property and voluntarily relinquished any rights of ownership. *Lacey v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2005-07453-AD, 2008-Ohio-2636.

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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
5/8
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