

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

CHRISTOPHER ELAM

Plaintiff

v.

RICHLAND CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-11231-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 30, 2008, plaintiff, Christopher Elam, an inmate incarcerated at defendant, Richland Correctional Institution (“RiCI”), was transferred from the RiCI general population to a segregation unit for an institutional rule violation. Plaintiff’s personal property was inventoried, packed, and delivered into the custody of RiCI staff incident to this internal transfer. Subsequently, on May 23, 2008, plaintiff was transferred from RiCI to the Chillicothe Correctional Institution (“CCI”).

{¶ 2} 2) Plaintiff contended that his television set, radio/cd player, and a set of headphones were stolen after he was transferred to segregation and before defendant’s personnel packed his property. Plaintiff pointed out his property was left unsecured in his living area for a period of almost two hours after he was removed to segregation. Plaintiff contended his property items were stolen as a proximate cause of negligence on the part of defendant in unreasonably delaying the pack-up of his property and thereby facilitating theft attempts. Consequently, plaintiff filed this complaint seeking to recover \$206.33, the replacement cost of his alleged stolen property items. Evidence

has shown plaintiff arrived at the RiCI segregation unit at approximately 3:20 p.m. on April 30, 2008 and his property was packed at approximately 5:15 p.m. on April 30, 2008. Apparently, plaintiff first notified defendant about stolen property on May 23, 2008, the day he was transferred to CCI. Payment of the filing fee was waived.

{¶ 3} 3) Defendant argued plaintiff failed to produce sufficient evidence to establish his radio/cd player, television, and headphones were stolen as a proximate cause of any negligence on the part of RiCI staff. Defendant explained plaintiff was given an opportunity to accompany RiCI personnel “to retrieve and process his own property” before he was transferred to segregation. According to defendant, plaintiff refused the opportunity to assist in the pack-up of his own property. Furthermore, defendant related plaintiff “was in debt to other inmates and had been selling his property to cover the debt.” Defendant contended plaintiff had sold his television set and radio/cd player several weeks prior to April 30, 2008. Defendant pointed out plaintiff had access to a locker box in which to secure his property and when RiCI personnel went to plaintiff’s living area to begin packing his property, they found plaintiff’s locker box was locked. Defendant denied there was any unreasonable delay involved in packing plaintiff’s property incident to his transfer to segregation. Also, defendant maintained RiCI staff conducted “proper required institutional rounds” of plaintiff’s living area during the time he was separated from his property and the time the items were packed.

{¶ 4} 4) Plaintiff filed a response insisting his television set, headphones, and radio/cd player were stolen as a result of negligence on the part of defendant in failing to conduct a timely property pack-up. Plaintiff essentially denied he sold his property as defendant suggested. Plaintiff stated defendant was aware that he had “been threatened by inmates and that the threats presented a serious risk for (him) to be in the vicinity of his property.” Additionally, plaintiff maintained defendant was responsible “to ensure the protection of his 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 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.

{¶ 10} 6) "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} 7) The allegation that a theft 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*.

{¶ 12} 8) 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} 9) 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.

{¶ 14} 10)Plaintiff may show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Marion Correctional Institution* (1981), 81-05202-AD.

{¶ 15} 11)In the instant claim, plaintiff has failed to prove any delay in packing his property resulted in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD; *Knowlton v. Noble Corr. Inst.*, Ct. of Cl. No. 2005-06678-AD, 2005-Ohio-4328.

{¶ 16} 12)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 does not find plaintiff's assertions particularly persuasive in regard to the allegation his television set, headphones, and radio/cd player were actually stolen.

{¶ 17} 13)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. However, no search is required if the evidence available does not support a finding that a property theft did in fact occur.

{¶ 18} 14)Plaintiff has failed to prove, by a preponderance of the evidence, his property items were stolen and unrecovered as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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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
4/30
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