

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

ANTHONY T. LEE

Plaintiff

v.

PICKAWAY CORRECTIONAL INST.

Defendant

Case No. 2009-01263-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 12, 2008, plaintiff, Anthony T. Lee, a former inmate incarcerated at defendant, Pickaway Correctional Institution (“PCI”), was transferred from the PCI general population to a segregation unit for an institutional rule violation. Plaintiff related he delivered all his personal property to PCI personnel incident to his transfer. The property was subsequently stored in the PCI property vault until April 18, 2008 when the items were returned to plaintiff’s possession.

{¶ 2} 2) Plaintiff asserted that when he regained possession of his property he discovered several items were missing. Plaintiff stated “all of my commissary was gone a pair of Timberland boots, 3 manuscripts, a song catalog of over 90 R & B songs, a Webster Rhyming Dictionary, one (1) book and numerous subscription magazines that were lost or/and stolen.” Plaintiff contended his property items had been left unattended at the institution security desk for over six hours on April 12, 2008 before the items were forwarded to the PCI property vault. Plaintiff pointed out his manuscripts, periodicals, song catalog, and other personal records were located by PCI staff, but

were not returned to his possession and were thrown away. Consequently, plaintiff filed this complaint seeking to recover \$160.00 for his boots, \$57.80 for his commissary items, \$10.00 for his Webster Rhyming Dictionary, \$16.95 for his book, and \$116.89 for his magazines. Plaintiff's total damage claim amounts to \$361.64. Plaintiff claimed "\$1500.00 in punitive damages for the destruction of the (2) manuscripts" that were not returned. Punitive damages cannot be awarded by this court. See *Drain v. Koysdar*. Any claim for punitive damages is stricken and shall not be further addressed. Payment of the filing fee was waived.

{¶ 3} 3) Defendant admitted liability for the loss of plaintiff's commissary, book, and rhyming dictionary. Defendant acknowledged plaintiff's damage amount for the loss of these items, \$84.75. However, defendant asserted plaintiff has not provided sufficient evidence to prove his song catalog, manuscripts, boots, and magazines were lost, stolen, or destroyed while under the control of PCI staff. None of the disputed property items appear on the plaintiff's property inventory compiled on April 12, 2008. Defendant admitted some papers were confiscated from plaintiff and the papers were subsequently destroyed when plaintiff refused to mail the confiscated papers from PCI to a designated address. Defendant made no attempt to identify the content of the confiscated papers. Defendant pointed out plaintiff's property was confiscated since the amount of property he possessed exceeded institutional property volume limitations for inmate property possession and therefore, constituted an internal policy violation. Defendant contended plaintiff failed to prove he actually owned a pair of boots while incarcerated at PCI. Plaintiff submitted evidence in the form of property inventories showing he possessed boots on December 17, 2003, July 21, 2005, and April 8, 2007; the latter date inventory was compiled by PCI personnel. Defendant argued plaintiff has not presented any proof of ownership of the confiscated papers included magazines and/or manuscripts. Furthermore, defendant seemingly argued plaintiff has not provided any evidence to establish he delivered a pair of boots to PCI staff on April 12, 2008. Defendant specifically denied liability for the loss of boots, magazines, and manuscripts.

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) 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.

{¶ 6} 3) 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} 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 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} 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) Negligence on the part of defendant has been shown in respect to the issue of property protection of plaintiff’s commissary items and books. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD.

{¶ 12} 9) Plaintiff failed to prove he actually delivered a pair of boots,

magazines, and manuscripts into defendant's custody and control. Plaintiff's failure to prove delivery of the above listed property defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 13} 10) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst.*, Ct. of Cl. No. 2002-05751, 2005-Ohio-4455 obj. overruled, 2005-Ohio-5068.

{¶ 14} 11) 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} 12) In the instant claim, plaintiff has failed to prove any of defendant's delay in packing his property resulted in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD; *Knowlton v. Noble Corr. Inst.*, 2005-06678-AD, 2005-Ohio-4328.

{¶ 16} 13) Assuming defendant did confiscate plaintiff's magazines and manuscripts and subsequently destroyed these items no liability shall attach since the confiscated property was declared impermissible in violation of internal policy. An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 17} 14) Plaintiff, 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 plaintiff in the amount of \$84.75. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
6/11
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