

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

JAMES A. SHARP

Plaintiff

v.

MARION CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-01956-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} “1) Plaintiff, James A. Sharp, a former inmate incarcerated at defendant, Marion Correctional Institution (MCI), asserted a fellow inmate entered his housing unit through an unlocked door, broke into his locked locker box, and stole several items of personal property stored inside. Plaintiff contended the door to his housing unit was unlocked by defendant’s employee, in violation of MCI internal regulations, thereby allowing access to the unit and the property stored inside his locker. Plaintiff recalled the theft incident occurred on “Thursday 8 Aug 08.” It should be noted August 8, 2008 was a Friday. Plaintiff submitted a document advising the theft occurred on “7 August 08.”

{¶ 2} “2) Plaintiff claimed his stolen property included twenty-two compact discs, one set of headphones, a compact disc player, various food items, personal hygiene items, and tobacco products. Plaintiff explained eighteen compact discs and his compact disc player were subsequently recovered. The remaining property that was stolen from his housing unit bed area was never found. Plaintiff contended his property

was stolen as a proximate cause of negligence on the part of MCI staff in allowing access to his housing unit and then permitting stolen property to leave the particular housing unit in the hands of another inmate who lived in a separate housing unit. Plaintiff filed this complaint seeking to recover \$110.36, the estimated replacement value of his unrecovered compact discs, headphones, food stuffs, personal hygiene items, and tobacco products. Payment of the filing fee was waived.

{¶ 3} “3) Plaintiff submitted a written statement relating he was informed of the identity of the inmate thief by fellow inmates. Plaintiff noted he “did receive (August 09, 2008) 18 of the 22 cd’s, but none of my commissary was returned to my bed area.” Plaintiff also pointed out he recovered his compact disc player with the assistance of fellow inmate relatives.

{¶ 4} “4) Defendant denied any liability in this matter arguing that plaintiff failed to prove his property was stolen as a proximate cause of negligence on the part of MCI personnel. Defendant stated “a review of the lock officer’s log book revealed that on the date of the theft, officers made their rounds on a regular basis and that DRC Policy was followed.” Defendant denied any responsibility for the acts of an inmate thief. Defendant asserted any duty of care owed to plaintiff to protect his property was discharged when plaintiff was supplied with a locker box in which to secure his property. Defendant noted some of plaintiff’s property was recovered after the theft was reported. Defendant submitted a written statement from an inmate identified as Michael Krupeany, who claimed another inmate, Lassiter #522-891, gave him “a laundry bag full of CD’s” on or about August 11, 2008. Krupeany further stated he accepted the laundry bag and took it to Lassiter’s housing unit and “Lassiter reaccepted the laundry bag and passed the CD’s off to another inmate.” Krupeany denied having any knowledge at the time that the compact discs in the laundry bag were stolen property. According to defendant, inmate Lassiter denied stealing plaintiff’s 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, 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 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.

{¶ 13} “9) The fact 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* (1986), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 14} “10) 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.

{¶ 15} “11) The Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined *** in accordance with the same rules of law applicable to suits between private parties ***’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 766; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institution security. *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 47.

{¶ 16} “12) Prison regulations, including those contained in the Ohio Administrative Code, “are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates.” *State ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 479, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Connor* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Additionally, this court has held that “even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence.” *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff alleges MCI staff failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 17} “13) Plaintiff has failed to show any causal connection between any property theft and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

{¶ 18} “14) Plaintiff has failed to prove, by a preponderance of the evidence, his

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:

James A. Sharp
14026 Castalia
Cleveland, Ohio 44110

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
9/15
Filed 10/7/09
Sent to S.C. reporter 1/29/10