

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

CARL KILBURN JR.

Plaintiff

v.

LONDON CORR. INST.

Defendant

Case No. 2009-02251-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On September 18, 2008, plaintiff, Carl Kilburn, Jr., an inmate incarcerated at defendant, London Correctional Institution (“LoCI”), was transferred from LoCI to an outside medical facility for treatment. Incident to this transfer, plaintiff’s personal property was inventoried, packed, and delivered into the custody of LoCI staff.

{¶ 2} 2) Plaintiff asserted that when he returned to LoCI and regained possession of his property he discovered several items were missing. Plaintiff claimed a pair of gym shorts, two wash cloths, two pairs of boxer shorts, two t-shirts, two pairs of socks, a bath robe, and a towel he had stored in a laundry bag were missing. Additionally, plaintiff claimed a chain with an attached medallion and a wedding ring that he had stored in his locker box were also among the missing items. Plaintiff contended his property was lost or stolen as a proximate cause of negligence on the part of LoCI personnel in handling the property. Plaintiff filed this complaint seeking to recover \$175.00 for property loss and \$125.00 for pain and suffering attendant to his property loss. Payment of the filing fee was waived.

{¶ 3} 3) Plaintiff reported the loss of his property on September 22, 2008 and LoCI personnel completed a “Theft/Loss Report.” Apparently staff investigated the report by reviewing camera footage and conducting other unspecified investigatory procedures. No property was recovered.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant maintained plaintiff’s property was secure from the time he was transferred during the morning hours of September 18, 2008 until LoCI took control of the property at approximately 10:42 a.m. on September 18, 2008. An inventory of plaintiff’s property was compiled by LoCI staff at approximately 11:05 a.m. on that same day. Plaintiff’s property had been stored inside a locked locker box when transported to the LoCI property vault. The locked locker box was opened when it was received at the property vault and an inventory was compiled. Defendant submitted a copy of the inventory. The inventory does not list a robe, gym shorts, boxer shorts, wash cloths, wedding ring, and necklace with attached medallion. Property items listed that are relevant to this claim include four pairs of socks, one towel, and four t-shirts. The inventory bears plaintiff’s signature dated September 18, 2008 acknowledging all property listed was returned to his possession. Defendant argued plaintiff has failed to offer any proof his property was lost or stolen as a proximate cause of any act or omission by LoCI staff in handling the property. Defendant contended plaintiff is not entitled to pain and suffering damages in a claim of this type. Defendant disputed plaintiff’s assertion that he actually owned a wedding ring and necklace with attached medallion. No titles for these items could be located.

{¶ 5} 5) Plaintiff filed a response pointing out his clothing items he claimed missing were in a laundry bag and his ring and necklace were secured in a small bag inside his locked locker box. Plaintiff asserted only one half of the items stored inside his locker were listed on the September 18, 2008 property inventory. Plaintiff claimed he conducted his own property pack-up.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 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.

{¶ 13} 8) Plaintiff’s failure to prove delivery of the claimed missing property to 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.

{¶ 14} 9) 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.

{¶ 15} 10) This court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056.

{¶ 16} 11) Plaintiff has no right to pursue a claim for confiscated, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Plaintiff has failed to offer sufficient evidence to prove he actually owned a wedding ring and necklace with attached medallion.

{¶ 17} 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 property was lost or stolen.

{¶ 18} 13) 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.

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

{¶ 20} 15) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property was lost or stolen 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

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