

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.

DEPT. OF REHABILITATION/CORRECTIONS

Defendant

Case No. 2009-02430-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 12, 2009, plaintiff, James A. Sharp, an inmate incarcerated at defendant's Marion Correctional Institution (MCI), was transferred from the MCI general population to a segregation unit. Plaintiff asserted that at some time after his transfer his locker box was broken into and several property items were stolen. Plaintiff contended that MCI staff failed to protect or secure his property. Specifically, plaintiff alleged that MCI employee, "Officer Sharp recklessly turned the other way, while my locker box was kicked-open and all the attached mentioned personal property was stolen from me." Plaintiff further alleged that Officer Sharp permitted additional thefts of his personal property.

{¶ 2} 2) Plaintiff claimed that the following property items were stolen: a set of Koss headphones, a calculator, three pairs of boxer shorts, one pair of Reebok sandals, one prayer rug, one GPS radio/CD player, one watch, one Wahl trimmer,

seventeen CDs, and multiple food products purchased at the MCI commissary. Plaintiff maintained that his property was stolen as a proximate cause of negligence on the part of MCI personnel in failing to provide adequate protection and security. Plaintiff filed this complaint seeking to recover \$359.66, the stated replacement cost of his alleged stolen property. Payment of the filing fee was waived.

{¶ 3} 3) Defendant denied that any MCI employee permitted inmates to steal plaintiff's property from his locker box. Defendant pointed out that plaintiff did not have a lock for his locker box. Defendant explained that plaintiff's property was packed incident to his transfer. A copy of plaintiff's property inventory compiled at 3:00 p.m. on January 12, 2009 was submitted. Defendant denied leaving plaintiff's property unsecured to facilitate theft attempts. Defendant did not file a theft report when informed by plaintiff of an alleged theft. Defendant related that all of plaintiff's property was packed at approximately 3:00 p.m. on January 12, 2009, about one hour after plaintiff was transferred to segregation and separated from his property.

{¶ 4} 4) Plaintiff filed a response noting that he locks his locker box at all times. Plaintiff reasserted that his property was stolen as a proximate cause of defendant's negligence in failing to adequately protect the property by conducting a prompt pack-up. Additionally, plaintiff asserted that cameras should have been installed at MCI to monitor inmate activity to curtail or investigate property thefts.

CONCLUSIONS OF LAW

{¶ 5} 1) 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} 2) 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} 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.

{¶ 8} 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.

{¶ 9} 5) 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.

{¶ 10} 6) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that 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.

{¶ 11} 7) 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} 8) "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; and *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 13} 9) The allegation that a theft may have 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 that 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 fact that 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.

{¶ 16} 12) 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.

{¶ 17} 13) In the instant claim, plaintiff has failed to prove that 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.

{¶ 18} 14) Plaintiff has failed to prove, by a preponderance of the evidence, that any of his property was 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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
6/29
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