

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

ROBBY LEON HOLT

Plaintiff

v.

CHILLICOTHE CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-03771-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On May 2, 2008, a locker box provided to plaintiff, Robby Leon Holt, an inmate formerly incarcerated at defendant, Chillicothe Correctional Institution (“CCI”), was taken from plaintiff’s living area, broken into, and the contents stored inside were stolen. The personal property stolen from plaintiff’s locker box included food items, tobacco products, personal hygiene products, batteries, and a beard trimmer. CCI personnel conducted a prompt, but fruitless search after plaintiff reported the theft.

{¶ 2} 2) Plaintiff has asserted his property was stolen as a proximate cause of negligence on the part of defendant’s staff in failing to provide adequate security in his housing area. Plaintiff filed this complaint seeking to recover \$82.16, the replacement cost of his stolen property. The \$25.00 filing fee was paid.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant contended that plaintiff has failed to prove his property was stolen as a proximate cause of any negligence on the part of CCI personnel in regard to security matters. Defendant argued plaintiff failed to prove his property was stolen as a result of CCI staff breaching

any duty of care owed to him. Defendant asserted reasonable attempts were made to protect plaintiff's property and to recover the property once a theft was reported.

{¶ 4} 4) Plaintiff filed a response insisting defendant should bear liability for his loss due to the fact the locks available for purchase at the CCI commissary are inadequate and inferior to secure a locker box lid. Plaintiff disputed defendant's assertion that reasonable measures were taken by CCI staff to recover his property once a theft was reported. Furthermore, plaintiff disputed defendant's claim that CCI personnel made periodic rounds of his living area during the early morning hours of May 2, 2008. Plaintiff noted defendant has posted security cameras in his living area and tapes of camera footage should have been reviewed to conclusively prove if CCI personnel made periodic rounds on May 2, 2008. Plaintiff contended no CCI personnel made any rounds of his living area during the morning of May 2, 2008.

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 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) In order to recover against a defendant in a tort action, plaintiff must provide 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.

{¶ 10} 6) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that it 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 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* (1986), 84-02425. Plaintiff must show that defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 13} 9) Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 14} 10) 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. Defendant is not required to taken extraordinary measures to provide inmates means to secure their property. *Andrews v. Allen Correctional Inst.* (2009), 2008-09732-AD.

{¶ 15} 11) 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.

{¶ 16} 12) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, the court held that defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. In the instant case, plaintiff's property items claimed were indistinguishable and, therefore, no duty to search arose.

{¶ 17} 13)Plaintiff has failed to prove, by a preponderance of the evidence, that defendant was negligent in respect to making any attempts to recover indistinguishable stolen property. See *Williams v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2005-11094-AD, 2006-Ohio-7207.

{¶ 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; *Hall v. London Correctional Inst.*, Ct. of Cl. No. 2008-04803-AD, 2008-Ohio-7088

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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
7/27
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