

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 PARKS

Plaintiff

v.

TRUMBULL CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-05269-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, James Parks, an inmate incarcerated at defendant, Trumbull Correctional Institution (TCI), related his locker box was broken into on March 30, 2009 and several property items were stolen. According to plaintiff, the property items stolen included food products, laundry detergent, deodorant, toothpaste, wash cloths, a towel, a plug outlet, a set of Koss headphones, a Sony radio/cassette player, and a Sony radio.

{¶ 2} 2) Plaintiff recalled he reported the theft of his property to TCI staff immediately after discovering items missing from his locker box when he returned to his cell from dinner at approximately 5:25 p.m. on March 30, 2009. Plaintiff suggested his cellmate at the time, Heriberto Torres #522-073 stole the property stored inside the locker box.

{¶ 3} 3) Plaintiff asserted defendant should bear liability for this stolen property and broken lock, "because they forced me to cell with a well-known cell-thief." Plaintiff filed this complaint seeking to recover \$182.50, the stated replacement cost of

his stolen property items and damaged lock. Payment of the filing fee was waived.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant contended plaintiff failed to produce any evidence to establish his property loss was attributable to any negligent act or omission on the part of TCI personnel. Defendant maintained “there is no evidence presented that connects (p)laintiff’s cellmate at the time, Inmate Torres #522-073 . . . to the (March 30, 2009) theft.” Defendant pointed out Inmate Torres has never been convicted of a theft offense rule violation while incarcerated at TCI. Torres has been disciplined multiple times since July 2007 for various rule violations. Defendant explained plaintiff reported the March 30, 2009 theft to “the Major” and the Inspector of Institutional Services (report submitted) “does not investigate theft/loss reports they are given to the Major.” Defendant did not provide any documentation that a theft of plaintiff’s property occurring on March 30, 2009 was investigated by any TCI personnel. Defendant submitted a copy of a theft/loss report dated June 10, 2009 addressing property thefts plaintiff reported that he stated occurred from December 15, 2008 to December 23, 2008.

{¶ 5} 5) Plaintiff filed a response expressing his belief that the inmate who stole property from his locker box on March 30, 2009 is Brandon Travis #551-985. Plaintiff pointed out he did not cell with Inmate Torres #522-073, but he did cell with Brandon Travis #551-985. Plaintiff insisted “TCI knew that inmate Travis, #551-985 is a well-known cell-thief.” Plaintiff asserted his grievances filed over the matter of his stolen property were never answered and therefore constituted a violation of the Ohio Administrative Code. Plaintiff recalled TCI staff filled out a theft/loss report addressing the March 30, 2009 theft on or about April 5, 2009. Plaintiff further recalled he was never given a copy of this April 5, 2009 theft/loss report. The claim file is devoid of any theft/loss report dated on or about April 5, 2009. Plaintiff contended defendant did not properly investigate the March 30, 2009 theft and this failure to investigate constitutes actionable negligence.

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) 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} 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.

{¶ 9} 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.

{¶ 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, 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) 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 defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 14} 9) 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; *Melson v. Ohio Department of*

Rehabilitation and Correction (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615; *Jenkins v. Richland Correctional Inst.*, Ct. of Cl. No. 2003-01768-AD, 2003-Ohio-4483. There is no evidence in the instant claim to prove TCI staff knew the identity of the inmate who stole plaintiff's property.

{¶ 15} 10) 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.

{¶ 16} 11) Defendant, when it retains control over whether an inmate's cell door is to be open or closed, owes a duty of reasonable care to inmates who are exclusively forced to store their possessions in the cell when they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD.

{¶ 17} 12) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to lock his cell door, and therefore, no liability shall attach to defendant as a result of any theft based on this contention. *Carrithers v. Southern Ohio Correctional Facility* (2002), 2001-09079-AD. No evidence has been produced to prove how a thief gained access to plaintiff's cell and locker box.

{¶ 18} 13) 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.

{¶ 19} 14) 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, the bulk of plaintiff's property items claimed were indistinguishable and, therefore, no duty to search arose.

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

{¶ 21} 16) Prison regulations "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. Indeed, the 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 asserts claims based upon alleged violations of internal rules and regulations, he fails to state a claim for relief.

{¶ 22} 17) 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.

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 PARKS

Plaintiff

v.

TRUMBULL CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-05269-AD

Deputy Clerk Daniel R. Borchert

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 Parks, #463-038
5701 Burnett Road
Leavittsburg, Ohio 44430-0901

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

RDK/laa
8/25
Filed 9/23/09
Sent to S.C. reporter 1/15/10