

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

CURTIS LEE POSTON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-04048-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 10, 2008, employees of defendant, Department of Rehabilitation and Correction (“DRC”), conducted a shakedown operations at the London Correctional Institution (“LoCI”). The shakedown was conducted by members of the DRC Security Response Team (“SRT”) and included a complete search of the dormitory housing unit where plaintiff, Curtis Lee Poston, was incarcerated. Plaintiff recalled his housing unit was evacuated during the time SRT members searched each inmate housing cubicle in the dormitory area. Apparently, inmate foot and wall lockers were ordered unlocked to facilitate the search of these storage units. Plaintiff pointed out he and all other inmates housed in the particular LoCI dormitory unit were stationed in the LoCI Dayroom during the shakedown search operation.

{¶ 2} 2) Plaintiff recalled that after the SRT search operation was completed, he rushed from the LoCI Dayroom to his housing area and he “then noticed that my and my bunkies (f)oot and (w)all lockers were left unlocked, and some but not all of our

personal property was strewn throughout our cubicle.” Plaintiff recalled he was the first inmate to arrive back to the housing area upon being released from the lock Dayroom area. Plaintiff noted he gathered his property together to make an accounting and discovered his beard trimmers, reading glasses, two typewriter ribbons, and an envelope containing approximately forty photographs were missing. According to plaintiff he reported to LoCI staff that his property items were missing and was handed a “Theft/Loss Report” by LoCI employee, Sgt. Kelly. Plaintiff stated that upon receiving the “Theft/Loss Report” he immediately returned the document back to Sgt. Kelly informing him that it was the responsibility of defendant’s staff to fill out the report. Furthermore, plaintiff asserted LoCI personnel failed to conduct a search for his property after the particular items were reported missing. Plaintiff recalled both he and Sgt. Kelly completed a “Theft/Loss Report” on January 14, 2008, four days after the SRT shakedown search. However, this report was apparently misplaced and no search for the reported missing property was conducted.

{¶ 3} 3) Plaintiff contended his property was lost or stolen while under the control of SRT during the January 10, 2008 shakedown search. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$15.15 for beard trimmers, \$45.00 for the reading glasses, \$21.50 for the typewriter ribbons, and \$60.00 per photographs or \$2,400.00 for the forty photographs. Payment of the filing fee was waived.

{¶ 4} 4) Defendant stated “that available evidence is inconclusive as to what may have occurred in respect to plaintiff’s property” incident to the January 10, 2008

shakedown search. Defendant acknowledged plaintiff's property could have been discarded by members of the SRT. However, defendant also suggested the beard trimmers, typewriter ribbons, personal reading glasses, and personal photographs depicting family members could have been "traded or loaned (or) otherwise disposed of by plaintiff." Defendant essentially contended plaintiff failed to produce evidence to establish his property was lost or stolen while under the control of LoCI personnel. Alternatively, defendant maintained that if liability is determined, plaintiff has exaggerated his damage claim amount and adjustments should be made in accordance with existing law.

{¶ 5} 5) Plaintiff filed a response insisting his property was discarded by SRT members on January 10, 2008. Plaintiff argued defendant acted negligently in discarding his property and again acted negligently in failing to conduct a proper search for his property after a "Theft/Loss Report" was filed.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 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 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 the 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 such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 11} 6) 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 finds plaintiff’s assertions persuasive in regard to the loss of all property claimed.

{¶ 12} 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 damages. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Meniffee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

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

{¶ 14} 9) 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; *Russell v. Warren Correctional Inst.* (1999), 98-03305-AD. Defendant breached its duty of care in failing to search for plaintiff's property.

{¶ 15} 10) Negligence on the part of defendant has been shown in respect to all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 16} 11) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31.

{¶ 17} 12) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

{¶ 18} 13) In a situation where damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original cost, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282, 518 N.E. 2d 46.

{¶ 19} 14) The court finds defendant liable to plaintiff in the amount of \$125.00.

Court of Claims of Ohio

Case No. 2006-03532-AD

- 7 -

MEMORANDUM DECISION

Case No. 2006-03532-AD

- 7 -

MEMORANDUM DECISION

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

CURTIS LEE POSTON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-04048-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 plaintiff in the amount of \$125.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Curtis Lee Poston, #518-990
1580 State Route 56 S.W.
London, Ohio 43140

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

RDK/laa
10/7
Filed 10/15/08
Sent to S.C. reporter 1/6/09