

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

ULYSSES H. THOMAS

Plaintiff

v.

DEPT. OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-08370-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} “1) Plaintiff, Ulysses H. Thomas, an inmate incarcerated at defendant’s Ohio State Penitentiary (“OSP”), explained he was housed in a segregation unit from August 27, 2007 to October 15, 2007 and his personal property was stored under the control of OSP staff during that time period. On or about October 15, 2007, plaintiff was transferred from OSP to the North Central Correctional Institution (“NCCI”), where he regained possession of his personal property and discovered several items were not among his returned property.

{¶ 2} “2) Plaintiff claimed his property was lost while under the control of OSP staff and he has consequently filed this complaint seeking to recover \$52.16, the total replacement cost of the alleged missing items. Plaintiff pointed out the alleged lost property included the following: one remote control, one pack of AA batteries, one pack of AAA batteries, one pair of work-out gloves, one blue stocking hat, four pairs of undershorts, one pair of gloves, and two wash cloths. Payment of the filing fee was waived.

{¶ 3} “3) Defendant denied liability based on the contention that plaintiff failed to offer sufficient evidence to establish he actually possessed the alleged missing property. Defendant stated an inventory of plaintiff’s property was completed on August 27, 2007 at OSP and none of the alleged missing items are listed on this inventory. Neither defendant nor plaintiff submitted a copy of the August 27, 2007 inventory or any inventory compiled either at OSP or NCCI. Defendant denied ever receiving delivery of the alleged missing property.

CONCLUSIONS OF LAW

{¶ 4} “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.

{¶ 5} “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.

{¶ 6} “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.

{¶ 7} “4) 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.

{¶ 8} “5) This court has previously held that property in an inmate’s possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Consequently, plaintiff’s claim for property loss is denied since he has failed to offer sufficient proof to show he owned these articles consisting mostly of clothing items.

{¶ 9} “6) Assuming plaintiff could prove ownership his claim for property loss would still not prevail. Plaintiff’s failure to prove delivery of certain 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} “7) Plaintiff has failed to prove, by a preponderance of the evidence, any losses 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:

Ulysses H. Thomas, #A504-424
P.O. Box 1812
Marion, Ohio 43301-1812

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

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