

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

JERRY L. HOPSON

Plaintiff

v.

LONDON CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-10536-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On July 1, 2008, plaintiff, Jerry L. Hopson, an inmate incarcerated at defendant, London Correctional Institution (“LoCI”), was transferred from the LoCI general population to a segregation unit for an institutional rule violation. Incident to plaintiff’s transfer, his personal property was inventoried, packed, and delivered into the custody of LoCI staff. Plaintiff asserted his property was packed by fellow inmates in direct violation of internal policy that requires LoCI employees to conduct a pack-up of inmate property when inmates are transferred to a segregation unit.

{¶ 2} 2) Plaintiff related he was subsequently released from segregation and when he retrieved his property from storage he discovered several items were missing. Plaintiff maintained his alleged missing property items included one fan, one Sony radio, a can of loose tobacco, a bag of coffee, twelve honey buns, a pair of sandals, one pack of batteries, and a deck of playing cards. Consequently, plaintiff filed this complaint seeking to recover \$57.73, the estimated replacement cost of his alleged missing property. Plaintiff contended his property was lost or stolen as a proximate cause of

negligence on the part of LoCI staff in failing to follow internal policy regarding pack-up procedures. Plaintiff was not required to pay a filing fee.

{¶ 3} 3) Plaintiff submitted a copy of his property inventory compiled on July 1, 2008, when his property was packed. Plaintiff signed this document acknowledging the inventory represented a complete and accurate listing of all his personal property. The July 1, 2008 inventory does not list a fan, a radio, tobacco, cakes or pastries, or playing cards. The inventory does include one pair of shower shoes and one coffee. Plaintiff subsequently signed the inventory acknowledging all property listed had been returned to him.

{¶ 4} 4) Defendant denied all liability in this matter. Defendant explained plaintiff's property was packed in his absence by LoCI personnel. Defendant denied inmates packed plaintiff's property. Defendant contended plaintiff failed to produce any evidence to prove his property was lost or stolen as a proximate cause of any act or omission attributable to LoCI staff. Defendant related plaintiff filed two theft/loss reports regarding stolen property after he was released from segregation and resulting searches were conducted, but no property was recovered. Defendant maintained plaintiff's property was secured at the time the July 1, 2008 pack-up was conducted.

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 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 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.

{¶ 10} 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.

{¶ 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 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. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 14} 10) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish defendant actually assumed control over property. *Whiteside v. Orient Correctional Inst., Ct. of Cl. No. 2002-05751*, 2005-Ohio-4455, obj. overruled, 2005-Ohio-5068. Plaintiff failed to prove defendant actually exercised control over a fan, a radio, pastries, tobacco, and playing cards.

{¶ 15} 11) Plaintiff's failure to prove delivery of the above listed 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.

{¶ 16} 12) Plaintiff has failed to prove, by a preponderance of the evidence, he

sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 17} 13) Prison regulations, including those contained in the Ohio Administrative Code, “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, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Additionally, this 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 alleges that LoCI staff failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

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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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