

[Cite as *Brooks v. Dept. of Rehab. & Corr.*, 2007-Ohio-1927.]

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

GORDON BROOKS

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2006-05977-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On June 1, 2006, at approximately 12:45 p.m., plaintiff, Gordon Brooks, an inmate incarcerated at defendant's Southern Ohio Correctional Facility ("SOCF"), was transferred from the institution's general population to a segregation unit for a rule violation (flooding the cell range).

{¶2} 2) Plaintiff's personal property was inventoried, packed, and delivered into the custody of SOCF personnel incident to the transfer. Plaintiff's property was packed at approximately 6:28 p.m. on June 1, 2006. Plaintiff contended several of his personal property items were stolen from his cell at some period between the time he was transferred to segregation and the time his property was packed.

{¶3} 3) Plaintiff alleged the following property items were stolen, 1 GPX CD player, 6 CDS, 1 Sony walkman, 35 photographs, and three books. Plaintiff filed this complaint seeking to recover \$257.27, the estimated replacement value of his alleged stolen property. Plaintiff contended his property was stolen as a proximate cause of negligence on the part of SOCF personnel in delaying the property pack-up. Plaintiff was not required to pay a filing fee. Plaintiff requested an additional \$300.00 in damages for "discrimanation [sic], retaliation." Plaintiff contended defendant's inspector engaged in discriminatory and retaliatory conduct in answering a grievance submitted regarding the property theft.

{¶4} 4) Defendant denied any liability in this matter. Defendant explained, plaintiff, on June 1, 2006, intentionally flooded his cell and adjacent cells. Defendant further explained, plaintiff placed his personal property on his bunk in an effort to keep the property dry while he flooded the cell range at SOCF. Due to his behavior, plaintiff was immediately transferred to a disciplinary unit and his property remained in his bunk in his locked cell. The property was subsequently delivered into defendant's custody and stored in the SOCF property vault. Defendant related plaintiff's property items, "had apparently [been] placed on the end of his bed near the front of the cell," therefore facilitating access to the property for any individual who could reach a hand through the bars of the cell and onto the bed. Defendant pointed out plaintiff claimed inmate porters did such an act and stole his property. Although inmate porters were present on the cell range "to clean up the mess" plaintiff caused, defendant asserted no evidence has been presented to prove any property was stolen from plaintiff's cell.

Case No. 2006-05977-AD	- 7 -	MEMORANDUM DECISION
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{15} 5) Defendant acknowledged plaintiff reported the theft of his property and a cursory search was performed. No alleged stolen property items were recovered. Defendant denied SOCF staff did anything to facilitate the theft of plaintiff's property. Defendant suggested plaintiff himself created the situation which was the sole proximate cause of any resulting property theft.

{16} 6) Plaintiff responded to defendant's investigation report by insisting his property was stolen due to the fact there were no cameras installed in the particular cell range to allow SOCF personnel to visually monitor the area and prevent property thefts. Additionally, plaintiff contended SOCF staff should have been more vigilant in physically observing the cell range because of the lack of cameras and the presence of inmate porters on the cell range to clean up the flood damage. Furthermore, plaintiff claimed his property was stolen as a proximate cause of negligence on the part of SOCF staff in packing the property that was placed on a bed inside a locked cell. Plaintiff contended he did not deliberately cause the June 1, 2006, cell range flood and stressed the flooding resulted from a "toilet overflow" in his cell. Plaintiff implied the "toilet overflow" was accidental or due to some malfunction beyond his control. Plaintiff asserted he placed his property items on his bed because he had no other means to keep the property dry except for placing the items on his bed.

{17} 7) Plaintiff submitted a written statement from a fellow inmate, Richard Matthews, who was housed four cells away from plaintiff on the SOCF D-2 cell range on June 1, 2006. Matthews recorded, "inmate Brooks did not flood the range or any other cell. I heard him tell the officer that he needed a plunger because the toilet was backed up and his cell did have water on the floor but none came out of his cell D-2-74." This specific statement does not disprove the flooding was caused deliberately.

CONCLUSIONS OF LAW

{18} 1) The issue of alleged discrimination on the part of defendant's inspector is considered a constitutional claim. This court lacks subject matter jurisdiction over

Case No. 2006-05977-AD	- 8 -	MEMORANDUM DECISION
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alleged violations of constitutional rights and claims arising under Section 1983, Title 42, U.S. Code. *Bleicher v. Univ. of Cincinnati* (1992), 78 Ohio App. 3d 302. In the instant claim, plaintiff chose the wrong forum to pursue this action.

{¶19} 2) Concomitantly, any claims involving retaliatory conduct are not cognizable in this court. In *Deavors v. Ohio Dept. of Rehab. and Corr.* (May 20, 1999), Franklin App. No. 98AP-1105, 1999 Ohio App. LEXIS 2338, the court held that an inmate's claim regarding retaliatory conduct are properly classified as constitutional claims actionable under Section 1983, Title 42, U.S. Code.

{¶10} 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.

{¶11} 4) 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.

{¶12} 5) 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.

{¶13} 6) 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, supra*.

{¶14} 7) 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.

{¶15} 8) 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,

Case No. 2006-05977-AD	- 9 -	MEMORANDUM DECISION
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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. The court does not find plaintiff's assertions particularly persuasive.

{¶16} 9) 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.

{¶17} 10) 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 issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶18} 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 possession in the cell while they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD.

{¶19} 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.

{¶20} 13) Plaintiff may show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Marion Correctional Institution* (1981), 81-05202-AD.

{¶21} 14) In the instant claim, plaintiff has failed to prove any defendant's delay in packing his property resulted in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD; *Knowlton v. Noble Corr. Inst.*, 2005-06678-AD, 2005-Ohio-4328.

{¶22} 15) Plaintiff has failed to prove, by a preponderance of the evidence, any of

Case No. 2006-05977-AD	- 10 -	MEMORANDUM DECISION
------------------------	--------	---------------------

his property was stolen as a proximately 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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
3/5
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