

# 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

SCOTT W. BRUMBAUGH

Plaintiff

v.

LEBANON CORRECTIONAL INST.

Defendant

Case No. 2008-11826-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶ 1} 1) On July 16, 2008, at approximately 10:40 a.m., plaintiff, Scott W. Brumbaugh, an inmate incarcerated at defendant, Lebanon Correctional Institution (“LeCI”), was transferred from the LeCI general population to an isolation unit for an institutional rule violation. Plaintiff related that about 10:45 p.m. on that same day, he was permitted to return to his cell presumably to pack his personal property. According to plaintiff, when he arrived at his cell he discovered his property had already been packed. Plaintiff explained he had stored his personal property in a locked locker box inside his cell. Plaintiff noted his packed property was transferred from his cell to the LeCI property vault. Plaintiff recalled he was allowed to examine the property taken to the LeCI vault and reported that several items were missing. Plaintiff suggested his property was stolen from his locker by his cellmate during the period he was transferred to isolation to when he returned to his cell.

{¶ 2} 2) On October 16, 2008 plaintiff was transferred from LeCI to the Toledo Correctional Institution (“TOCI”). Plaintiff asserted that when he retrieved his property at

TOCI he discovered multiple additional items were missing. Plaintiff suggested LeCI staff failed to pack all his property incident to his transfer to TOCI.

{¶ 3} 3) Plaintiff claimed the following items were stolen or lost: one adapter, one beard trimmer, one lamp, one fan, one bowl, one television antenna, one “Super radio,” two bottles of shampoo, one sewing kit, eight bottles of vitamins, three boxes of detergent, one deodorant, three tubes of toothpaste, forty-five envelopes, one box of tea bags, six fig bars, six wheat crackers, two cheese squeeze, two sticks sport talc, two tubes of lip balm, one bag of sugar, one fabric softner, one toothbrush, five cigars, one can of loose tobacco, two AA batteries, one pack of disposable razors, five bags of coffee, one bath towel, one set of headphones, one set of ear buds, one silver medallion, one leather watch band, one radio/cd player, one pair of sweat pants, one cotton cap, one radio/cassette player, two pairs of shorts, one pair of gym shoes, one mirror, one two quart pitcher and one hot pot.

{¶ 4} 4) Plaintiff contended his property was lost or stolen as a proximate cause of negligence on the part of LeCI staff. Plaintiff filed this complaint seeking to recover \$478.21, the stated replacement value of all the alleged missing property. Payment of the filing fee was waived.

{¶ 5} 5) Defendant denied liability in this matter. Defendant produced a copy of plaintiff’s property inventory dated July 16, 2008. Plaintiff signed the property inventory acknowledging the document represented a “complete and accurate inventory” of all his personal property. Items listed on the inventory relevant to this claim include two pairs of gym shorts, three towels, razors, shampoo, tobacco, two toothbrushes, and one toothpaste. Defendant did not submit an inventory or other documentation listing plaintiff’s property items that were sent with him to TOCI. Defendant contended plaintiff “waived his right to dispute the property when he signed his pack up list on July 16, 2008 indicating that all property was accounted for and in his possession.” Defendant asserted internal policy mandates “that if an inmate claims that property is missing from his pack up that he notes this on the inmate property record.” No such notation is contained on plaintiff’s July 16, 2008 property record. Defendant denied plaintiff ever informed LeCI staff any of his property was missing. Defendant contended plaintiff has not offered proof to establish “he possessed the alleged missing items.” Contrary to defendant’s contention, plaintiff did produce documentation filed

with his complaint that establishes he did at one time possess the property claimed.

{¶ 6} 6) Plaintiff filed a response essentially arguing his property was stolen on July 16, 2008 as a result of negligence on the part of defendant in delaying the property pack up. Plaintiff related he was transferred to isolation at approximately 10:40 a.m. and his property was packed at approximately 10:40 p.m. some twelve hours later. Plaintiff asserted he should be entitled to damages for his actual property loss, plus “pain and suffering and time lost in filing this claim.” Plaintiff explained he did not have sufficient time to examine his property during the July 16, 2008 pack up and he was rushed by LeCI personnel. Plaintiff insisted he promptly reported items were missing from his pack up.

#### CONCLUSIONS OF LAW

{¶ 7} 1) Initially, it should be noted that this court does not recognize entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 4) 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} 5) 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.

{¶ 12} 6) Plaintiff’s failure to prove delivery of his claimed stolen property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of

defendant in respect to damaged property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 13} 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 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.

{¶ 14} 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.

{¶ 15} 9) The allegation that a theft 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*.

{¶ 16} 10) 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.

{¶ 17} 11) 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.

{¶ 18} 12) 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.

{¶ 19} 13) In the instant claim, plaintiff has failed to prove any delay in packing his property resulted in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD; *Knowlton v. Noble Corr. Inst.*, Ct. of Cl. No. 2005-06678-AD, 2005-Ohio-4328.

{¶ 20} 14) 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 does not find plaintiff's assertions particularly persuasive in regard to the allegation his property was actually stolen.

{¶ 21} 15) 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.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
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