

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

HUGH PAGE, JR.

Plaintiff

v.

OHIO STATE HIGHWAY PATROL

Defendant

Case No. 2008-10510-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 22, 2007, plaintiff, Hugh Page, Jr., an inmate who was incarcerated at the Southern Ohio Correctional Facility (“SOCF”) at the time, assaulted a corrections officer employed at SOCF. Additional SOCF employees responded to the assault, subdued plaintiff, and placed him in a holding cell where he was told to remove his clothing and change into an orange jump suit.

{¶ 2} 2) All of plaintiff’s clothing items were placed in a paper bag and allegedly delivered into the custody of an employee of defendant, Ohio State Highway Patrol (“OSHP”), who was investigating the assault. The clothing items which were covered in blood were allegedly seized as evidence by the investigating authority, OSHP. Plaintiff submitted evidence supporting the fact that his clothing, consisting of a t-shirt, mesh shorts, pair of socks, boxer shorts, and a pair of gym shoes, were subsequently destroyed by OSHP personnel. Plaintiff asserted defendant had no authority to destroy the seized clothing items and he has consequently filed this complaint seeking to recover \$108.95, the estimated replacement value of his clothing.

Payment of the filing fee was waived.

{¶ 3} 3) Defendant denied taking possession of plaintiff's clothing items. Defendant denied having any documentation to establish plaintiff's property was delivered into the hands of OSHP personnel. Defendant stated "at no time was the Highway Patrol in possession of plaintiff's property or was the Highway Patrol involved in taking plaintiff's property." Defendant explained OSHP regularly documents transfers of property and no documentation exists to show plaintiff's property was transferred to OSHP.

{¶ 4} 4) Plaintiff filed a response insisting he was informed by SOCF staff that his property was turned over to defendant. Alternatively, plaintiff suggested that if his property remained in the custody of SOCF staff than SOCF should bear the responsibility for his loss.

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) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶ 7} 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.

{¶ 8} 4) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right or ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶ 9} 5) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 10} 6) An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is lost or destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD; jud, 2005-Ohio-4320; *Watson v. Ohio State Penitentiary*, Ct. of Cl. No. 2007-05229-AD, 2008-Ohio-2848. Plaintiff's clothing items were impermissibly altered and consequently he has no right to recover the market value for the loss of such altered property.

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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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RDK/laa
5/21
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