

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

JAMES PARKS

Plaintiff

v.

TRUMBULL CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-03631-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 7, 2008, plaintiff, James Parks, an inmate incarcerated at defendant, Trumbull Correctional Institution (TCI), was injured necessitating a transfer to an outside hospital for medical treatment. Plaintiff's personal property was inventoried, packed, and delivered into the custody of TCI staff incident to this transfer.

{¶ 2} 2) On June 11, 2008, plaintiff retrieved his personal property. Plaintiff claimed his fan, two pairs of Jam shorts, and one box of Nutty Bars were missing from the property items he recovered. Plaintiff suggested his property was stolen at sometime after he was injured.

{¶ 3} 3) Plaintiff asserted he discovered his locker box had been broken into on December 15, 2008 and several food products and personal hygiene items stored inside were stolen. Plaintiff pointed out he immediately reported the theft to TCI personnel. Plaintiff suspected his cellmate, Raymond Crites #471-914 and another inmate, Stephen R. Flitcraft #533-719 of stealing his property. Plaintiff related "TCI staff knows Crites and Flintcraft [sic] are known cell thieves."

{¶ 4} 4) Plaintiff noted an additional theft incident occurred on December 19, 2008 when he discovered his clothing, food products, chess/checkers game, batteries, and prayer oil had been stolen from his cell. Plaintiff stated that he discovered the theft when he “returned to my cell from a pass and noticed that Flintcraft [sic] moved the cabinet and ravaged through all my property.”

{¶ 5} 5) Plaintiff recalled another theft incident occurred on December 23, 2008. On that date, plaintiff asserted he discovered his Sony radio/cd player and ten envelopes had been stolen from his cell. Plaintiff reported the theft and a search was conducted. Although the radio/cd player and envelopes were not recovered, plaintiff related a pair of his socks were found in a drawer in inmate Flitcraft’s cell.

{¶ 6} 6) Plaintiff filed this complaint seeking to recover damages totaling \$155.54, the stated replacement cost of all stolen property. Plaintiff contended his property was stolen as a proximate cause of negligence on the part of defendant in failing to provide adequate protection and security. Payment of the \$25.00 filing fee was waived.

{¶ 7} 7) Defendant seemingly acknowledged plaintiff’s property was stolen by inmates Crites and Flitcraft. However, defendant argued plaintiff has failed to establish his property was stolen as a proximate cause of any negligent act or omission on the part of TCI personnel. Defendant contended any duty to protect plaintiff’s property was discharged when plaintiff was supplied with a locker box to secure his property and when TCI staff assisted in attempting to recover property after a theft was reported. Defendant asserted plaintiff facilitated the theft of his property when “he left his cell door open and under the control of one of the inmates he knew to be stealing from him.”

{¶ 8} 8) Plaintiff filed a response explaining his property was left in his padlocked cell pending an investigation of his injury incident on June 7, 2008. The property was subsequently removed from the cell and delivered into defendant’s custody. Plaintiff claimed his fan, Jam shorts, and Nutty Bars were stolen at sometime after he was taken to an outside hospital for medical treatment and before the property stored in the locked cell was packed. In regard to the thefts reported in December 2008, plaintiff reasserted TCI employees were negligent in failing to provide adequate protection for his property to inhibit thefts. Plaintiff noted he identified the thieves, inmates Flitcraft and Crites, to TCI personnel and nothing was done to stop thefts from

occurring. Plaintiff insisted he always locked his cell door when he left the cellblock. Plaintiff submitted copies of Theft/Loss Reports filed incident to the June 11, 2008 property loss claim and the December 2008 loss claims. The Theft/Loss Report referencing the December 2008 loss claims was compiled on June 10, 2009 and bears the investigating officer's notation: "The locker box was kicked open, this is the second time I did a DRC 4194." Plaintiff did not submit a copy of the original Theft/Loss Report (DRC 4194) referencing the December 2008 theft claims.

CONCLUSIONS OF LAW

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 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.

{¶ 13} 5) Plaintiff's failure to prove delivery of a fan, Jam shorts, and Nutty Bars 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.

{¶ 14} 6) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst., Ct. of Cl. No. 2002-05751, 2005-Ohio-4455 obj. overruled, 2005-Ohio-5068.*

{¶ 15} 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 *Meniffee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 16} 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; and *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 17} 9) 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*.

{¶ 18} 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.

{¶ 19} 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.

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

{¶ 21} 13) 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. The facts support the conclusion plaintiff's own cellmate left their cell door unlocked thereby giving a thief access to plaintiff's locker box and other property in the cell.

{¶ 22} 14) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD; *Russell v. Warren Correctional Inst.* (1999),

98-03305-AD.

{¶ 23} 15) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, the court held that defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. In the instant case, the bulk of plaintiff's property items claimed were indistinguishable and, therefore, no duty to search arose.

{¶ 24} 16) Plaintiff has failed to prove, by a preponderance of the evidence, that defendant was negligent in respect to making any attempts to recover distinguishable or indistinguishable stolen property. See *Williams v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2005-11094-AD, 2006-Ohio-7207. Plaintiff has failed to prove defendant delayed in conducting any search or conducted an inadequate search.

{¶ 25} 17) 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.

{¶ 26} 18) 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.

{¶ 27} 19) Plaintiff has failed to prove, by a preponderance of the evidence, 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.



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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
8/19
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