

IN THE COURT OF CLAIMS OF OHIO

LAMAR REESE

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2024-00386AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Lamar Reese (“plaintiff”), an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related that between March 23, 2023 and February 22, 2024, plaintiff moved cell blocks on multiple occasions and his property was packed up and stored by defendant. When plaintiff was returned his property, the property listed in the March 22, 2023 Pack-up sheet was not returned to him. Additionally, on August 17, 2023, plaintiff alleges that defendant’s employees took plaintiff’s television into storage and failed to retrieve it for him once he was allowed to possess it again. Plaintiff argues that he requested multiple theft/loss reports be filed for his television, but prison staff failed to file the required report leaving plaintiff without recourse in the grievance process as the theft/loss reports must be filled out by prison officials. Plaintiff alleges the following items were lost: one (1) pair of white shoes, one (1) pair of black shoes, one (1) pair of navy gym shorts, one (1) thermal top, one (1) thermal bottom, one (1) pair of boxer briefs, one (1) container of scented oil, one (1) surge protector, one (1) ClearTunes radio, one (1) pair of green sweatpants, one (1) green sweatshirt, one (1) pair of miscellaneous shoes, one (1) pair of green shorts, an undisclosed amount of SNX magazines, one (1) Access Secure Pak, and one (1) ClearTunes TV.

{¶2} Plaintiff seeks damages in the amount of \$713.80. Plaintiff was not required to submit the \$25.00 filing fee with the complaint.

{¶3} On May 23, 2024, defendant submitted an investigation report admitting liability in this matter. Defendant asks that the court find for plaintiff in the full amount requested.

{¶4} As an initial matter, on May 24, 2024, plaintiff filed a motion to stay the present proceedings while he attempts to compromise with the Office of Risk Management pursuant to R.C. 2743.16(B). Additionally, plaintiff seeks to supplement his claim with a claim for intentional infliction of emotional distress in the amount of \$9,000.00. Accordingly, the court construes this as a separate motion to amend plaintiff's complaint.

{¶5} Defendant has admitted liability in this matter; therefore, plaintiff's motion to stay is DENIED as moot.

{¶6} Next, plaintiff is not able to alter the complaint after the investigation report has been filed. Defendant filed the investigation report on May 23, 2024. Plaintiff filed their motion to amend the complaint on May 24, 2024. Therefore, plaintiff's attempt to amend the complaint is DENIED.

{¶7} To prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed plaintiff a duty, that defendant breached that duty, and that defendant's breach proximately caused plaintiff's damages. *Armstrong v. Best Buy Co., Inc.*, 2003-Ohio-2573, ¶ 8, citing *Menifee v. Ohio Welding Prod., Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶8} Whether a duty exists is a question of law to be decided by the court, while breach of such duty is a question of fact. *Snay v. Burr*, 2021-Ohio-4113, ¶ 14, citing *Mussivand v. David*, 45 Ohio St.3d 314, 318, (1989).

{¶9} “[Defendant] does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but it does have the duty to make reasonable attempts to protect such property. When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. By virtue of this relationship, [defendant] must exercise ordinary care in handling and storing an inmate's property. However, a correctional institution cannot be held liable for the loss of contraband property that an inmate has no right to possess.” (Internal citations omitted.) *Triplett v. S. Ohio Corr. Facility*, 2007-Ohio-2526, ¶ 7 (10th Dist.).

{¶10} This court has consistently held that “[i]f property is lost or stolen while in defendant’s possession, it is presumed, without evidence to the contrary, defendant failed to exercise ordinary care.” Internal citations omitted. *Velez v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-2932 (Ct. of Cl.), ¶ 6. However, “[p]laintiff’s failure to prove delivery of [the property] to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property.” Internal citations omitted. *Jones v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-365 (Ct. of Cl.), ¶ 10. Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Corr. Inst.*, 2005-Ohio-4455 (Ct. of Cl.), *obj. overruled*, 2005-Ohio-5068.

{¶11} Plaintiff has the burden of proving, by a preponderance of the evidence, that plaintiff suffered a loss and that this loss was proximately caused by defendant’s negligence. *Coffman v. Mansfield Corr. Inst.*, 2009-Ohio-5859, ¶ 9 (10th Dist.).

{¶12} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant’s conduct is more likely a substantial factor in bringing about the harm. *Parks v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 1985-01546-AD (1985).

{¶13} To recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining plaintiff’s claim. If plaintiff’s evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, plaintiff fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82 (1954).

{¶14} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. The court is free to believe, or disbelieve, all or any part of each witness’ testimony. *State v. Antill*, 176 Ohio St. 61 (1964). The court finds plaintiff’s statement persuasive.

{¶15} Defendant admits liability in this matter. Therefore, judgment is rendered in favor of plaintiff in the amount of \$713.80.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

{¶16} 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 plaintiff in the amount of \$713.80. Court costs are assessed against defendant.

HOLLY TRUE SHAVER
Deputy Clerk