

[Cite as *Kitchens v. Lebanon Correctional Inst.*, 2004-Ohio-3490.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL GALEN KITCHENS :
Plaintiff :
v. : CASE NO. 2003-12221-AD
LEBANON CORRECTIONAL INST. : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Michael G. Kitchens, an inmate incarcerated at defendant, Lebanon Correctional Institution (LeCI), alleged that his radio/cassette player was stolen from his cell on August 18, 2003, at sometime between 7:00 a.m. and 8:00 p.m. Plaintiff further alleged his cell door was unlocked by an LeCI corrections officer, thereby giving an unidentified thief access to the cell.

{¶2} 2) Plaintiff stated he noticed his radio/cassette player was missing at approximately 8:30 p.m. on August 18, 2003. Plaintiff asserted he reported the theft of his property immediately after discovering the item was missing from his cell. From a review of the theft report submitted by plaintiff, it appears LeCI personnel did not conduct any sort of investigation into the matter of the theft or make any attempt to recover the stolen property.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$52.90, the total replacement cost of his radio/cassette player and

all attachments. Plaintiff contended his property was stolen as a proximate cause of negligence on the part of LeCI staff in opening cell doors by utilizing a master key box instead of manually opening a cell door with a key round. Plaintiff maintained that opening cell doors by a master key box which opens all cell doors on a range is contrary to proper procedure. The requisite filing fee was submitted on February 18, 2004. An entry from this court filed January 16, 2004, ordered plaintiff to pay the filing fee within 30 days of the date of the entry.

{¶4} 4) Defendant denied an LeCI staff member opened plaintiff's cell door to facilitate the theft of plaintiff's property. Defendant argued plaintiff failed to produce evidence showing LeCI personnel opened his cell door. Additionally, defendant asserted plaintiff was negligent in not storing his radio/cassette player in his locker box. Defendant implied this failure to store property in a locked locker box was the proximate cause of property theft on August 18, 2003.

{¶5} 5) On February 18, 2004, plaintiff submitted a response to defendant's investigation report. Plaintiff insisted his property was stolen because LeCI personnel unlocked his cell door to allow a thief to enter the cell.

CONCLUSIONS OF LAW

{¶6} 1) The mere fact 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, supra*.

{¶7} 2) Defendant is not responsible for actions of other 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.

{¶8} 3) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-0235-AD.

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

{¶10} 5) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to secure plaintiff's cell thereby facilitating theft attempts. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD.

{¶11} 6) 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.

{¶12} 7) 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.

{¶13} 8) 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.

{¶14} 9) Defendant's failure to search for plaintiff's radio/cassette player constituted a breach of defendant's duty to make reasonable attempts to recover stolen property. *Mullett*, supra.

{¶15} 10) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's property. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶16} 11) Defendant is liable to plaintiff in the amount of \$52.90, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶17} 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 \$77.90, which includes the filing fee. Court costs are assessed against defendant. 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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5/19

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