

[Cite as *Pinkerton v. N. Cent. Correctional Inst.*, 2005-Ohio-6114.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT EARL PINKERTON, JR. :  
Plaintiff :  
v. : CASE NO. 2005-05442-AD  
NORTH CENTRAL CORRECTIONAL INS.: MEMORANDUM DECISION  
Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On July 13, 2004, at approximately 10:18 a.m., plaintiff, Robert Earl Pinkerton, Jr., an inmate incarcerated at defendant's Richland Correctional Institution ("RiCI"), was transferred from the institution infirmary to a segregation unit. At approximately 10:25 a.m., on that same day, RiCI personnel went to plaintiff's dormitory living area and began to pack plaintiff's personal property. All property in this area was inventoried, packed and delivered into the custody of RiCI staff.

{¶ 2} 2) Defendant explained plaintiff was given an opportunity to pack his property, but he refused. Conversely, plaintiff denied being given the option to pack his property before he was physically transferred to a segregation unit. Plaintiff asserted RiCI employees substantially delayed in packing his property and as a proximate result of this alleged delay several items of his personal property were stolen.

{¶ 3} 3) Consequently, plaintiff filed this complaint seeking to recover \$551.30, the estimated replacement value of his alleged stolen items which included a television set, clothing, and food

stuffs. The filing fee was paid.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant denied any RiCI staff failed to provide adequate protection for plaintiff's property. Defendant denied there was an unreasonable delay in packing plaintiff's property. Defendant maintained plaintiff failed to prove he suffered any property loss as a result of any negligent act or omission on the part of RiCI employees.

{¶ 5} 5) In his response to defendant's investigation report, plaintiff related when he was transferred to segregation on October 13, 2004, all his property was stored in his locked locker box, with the exception of his television, bed lamp, two fans, and blanket. Plaintiff insisted his property was stolen on July 13, 2004, at sometime between 7:15 a.m., when he first went to the RiCI infirmary, and 10:25 a.m., when his property was packed.

#### CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) 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* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶ 10} 5) 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), 86-02635-AD.

{¶ 11} 6) 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.

{¶ 12} 7) Plaintiff's failure to prove delivery of certain items of property 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.

{¶ 13} 8) 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, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particularly persuasive.

{¶ 14} 9) 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.

{¶ 15} 10) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a

reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 16} 11) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

{¶ 17} "12) Plaintiff must show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Ross Correctional Institution* (1991), 1991-08841-AD.

{¶ 18} 13) However, 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.

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ROBERT EARL PINKERTON, JR.	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05442-AD
NORTH CENTRAL CORRECTIONAL INS.:	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : :

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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

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