

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

SCOTT A. COPLEY

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2009-01468-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 11, 2008, plaintiff, Scott A. Copley, an inmate formerly incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), was transferred from the SOCF Block L3 to a segregation unit. Plaintiff related he was wearing “a pair of white Nike Triple Clutch Basketball shoes” at the time and he was then “stripped searched and dressed out of my population clothing” which included the Nike shoes. Plaintiff explained the Nike shoes should have been forwarded to the SOCF property vault for storage with his other personal property that was packed incident to his transfer to segregation. However, according to plaintiff, the shoes were never taken to the SOCF property vault and have been missing since March 11, 2008. Plaintiff noted he discovered the shoes were missing when he was transferred from SOCF to the Ohio State Penitentiary (“OSP”) on June 18, 2008.

{¶ 2} 2) Plaintiff contended his shoes were lost or stolen as a proximate cause of negligence on the part of SOCF staff in handling the property. Consequently, plaintiff filed this complaint seeking to recover \$59.48, the purchase price of a pair of

Nike Triple Clutch Basketball shoes. In an additional complaint filed by plaintiff (Claim No. 2009-01450-AD) evidence was submitted to show plaintiff ordered a pair of Nike Triple Clutch Basketball shoes (color not designated) on February 27, 2008. A copy of plaintiff's property inventory compiled on June 18, 2008 at OSP lists one pair of black Nike gym shoes. Plaintiff was not required to pay a filing fee.

{¶ 3} 3) Defendant denied liability in this matter contending plaintiff failed to offer evidence to prove he delivered a pair of white Nike Triple Clutch shoes to SOCF staff on March 11, 2008. Defendant denied having any record of receiving a pair of white Nike Triple Clutch shoes from plaintiff. Defendant pointed out plaintiff possessed a pair of black Nike high top gym shoes when he was transferred from SOCF to OSP on June 15, 2008. Defendant denied having any information regarding the shoes claimed by plaintiff.

{¶ 4} 4) Plaintiff filed a response including a copy of his order form listing one pair of Nike Triple Clutch basketball shoes. Plaintiff maintained the Nike Triple Clutch shoes only come in white and are therefore distinguishable from the pair of black Nike gym shoes he possessed when transferred from SOCF to OSP. Defendant's internal regulations limit inmate possession of gym shoes to one pair. Other than his own assertion, plaintiff did not provide evidence he delivered a pair of white Nike Triple Clutch Basketball shoes to SOCF personnel on March 11, 2008.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 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 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.

{¶ 9} 5) 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 10} 6) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish defendant actually assumed control over property. *Whiteside v. Orient Correctional Inst., Ct. of Cl. No. 2002-05751, 2005-Ohio-4455, obj. overruled, 2005-Ohio-5068.* Plaintiff failed to prove defendant actually exercised control over a pair of white Nike Triple Clutch Basketball shoes.

{¶ 11} 7) Plaintiff's failure to prove delivery of the above listed 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.

{¶ 12} 8) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of 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:

Scott A. Copley, #468-120
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
7/9
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