

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

DAMIEN S. MCCOY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

Defendant

Case No. 2009-04904-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Damien S. McCoy, an inmate incarcerated at defendant's Toledo Correctional Institution (ToCI), filed this action alleging his television set was damaged while under the control of ToCI staff on or about February 20, 2008. Plaintiff explained that he was transferred from ToCI to the Lucas County Court on February 20, 2008 and he requested that his television set be mailed from ToCI to his home address. Plaintiff pointed out that he authorized the mailing of his television set by filling out a cash slip to have funds withdrawn from his inmate account to pay for postage costs.

{¶ 2} 2) Plaintiff related that he was subsequently transferred to defendant's Correctional Reception Center (CRC) and his property was forwarded there from ToCI including his television set which he asserted was never mailed. Plaintiff recalled that he was informed he could not possess a television set at CRC and consequently, he filled out another cash slip authorizing the withdrawal of funds from his inmate account to pay for postage to mail the television to his home address. Plaintiff asserted that the television set was not mailed to his home from CRC, but was instead sent back to ToCI.

Plaintiff was later transferred back to ToCI from CRC and he regained possession of his television set approximately one week from the time of his transfer.

{¶ 3} 3) Plaintiff contended that when he regained possession of his television set he “immediately discovered that it did not work.” Plaintiff further contended that the television set was totally destroyed while under the care of ToCI personnel. Plaintiff filed this complaint requesting damages in the amount of \$188.89, the stated replacement cost of a television set. Plaintiff also requested reimbursement of filing fee costs and mailing costs. The filing fee was paid. Plaintiff stated “[t]he initial cost of the tv was \$127.18,” when purchased in September 2006.

{¶ 4} 4) Plaintiff submitted written statements from fellow inmates Scott Reichow and Anthony Jackson who both noted that they observed plaintiff’s television set in working order at the time that he was transferred from ToCI on February 20, 2008. Reichow and Jackson recorded that they witnessed plaintiff plug in his television set after regaining possession of the device and saw that it did not work.

{¶ 5} 5) Defendant disputed plaintiff’s assertion that his television set was never mailed from CRC. According to defendant, plaintiff was transferred to CRC on March 6, 2008 with his television set. The television set was subsequently classified as contraband by CRC staff on April 9, 2008 and designated for mailing to plaintiff’s home address. Defendant did not submit any evidence to establish the television set was mailed from CRC. On July 24, 2008, plaintiff was transferred from CRC back to ToCI. Plaintiff’s property inventory (copy submitted) compiled by ToCI personnel incident to this transfer does not list a television set. The inventory bears plaintiff’s signature under the notation I certify that the above listed items are a complete and accurate inventory of all my personal property.” Defendant maintained that there is no record of plaintiff’s television set being returned to ToCI from CRC. Defendant suggested both that the television set was either mailed from CRC or was forwarded to ToCI. Under either scenario, defendant contended that plaintiff failed to offer sufficient evidence to prove his television set was damaged while under the custody and care of ToCI personnel. Defendant acknowledged that there is no record at ToCI concerning disposition of the television set that was sent to CRC. Defendant explained that plaintiff obtained a television set from another inmate at ToCI after he was transferred back and this television set was subsequently confiscated on December 8, 2008, declared contraband

and destroyed pursuant to plaintiff's authorization. Defendant surmised that if plaintiff's television set was actually damaged it is possible the set was damaged while under plaintiff's control. Additionally, defendant argued that plaintiff has failed to prove that the television set was totally damaged, if damaged at all. Defendant advised that plaintiff purchased a television set on October 6, 2006 for \$110.09.

CONCLUSIONS OF LAW

{¶ 6} 1) For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the 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 *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707. 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. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶ 7} 2) Plaintiff must produce evidence which affords a reasonable basis for the conclusion that 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.

{¶ 8} 3) 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.

{¶ 9} 4) 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} 5) 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} 6) Defendant is not responsible for property once it is shipped out of the facility. At that point, the property is the responsible of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1989), 89-12968-AD; *Reynolds v. Lebanon Correctional Institution* (2001), 2001-03798-AD, jud; *Frazier v. Mansfield Correctional Inst.*, Ct. of Cl. No. 2005-09375-AD, 2006-Ohio-7276 jud; *Wallace v. Corr. Reception Ctr.*, Ct. of Cl. No. 2006-06230-AD, 2007-Ohio-2418.

{¶ 12} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his television set was damaged as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 13} 8) Plaintiff has failed to show any causal connection between any damage to his television set and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

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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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
10/2
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