

[Cite as *Cobb v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-2109.]

IN THE COURT OF CLAIMS OF OHIO

AARON COBB :  
Plaintiff :  
v. : CASE NO. 2004-01192-AD  
OHIO DEPARTMENT OF : ENTRY  
REHABILITATION AND CORRECTION :  
Defendant :  
:.....

{¶1} On January 8, 2004, plaintiff filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff alleges on July 15, 2003, his locker box was broken into by an unknown individual and \$108.04 of personal property and commissary items were stolen. Plaintiff makes no allegation concerning defendant's negligence.

{¶2} On February 10, 2004, plaintiff submitted the filing fee.

{¶3} On March 11, 2004, defendant filed a motion to dismiss. In support of the motion to dismiss defendant stated in pertinent part:

{¶4} "Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by Defendant's negligence. *Barnum v. Ohio State Univ.* (1977), 76-0368-AD. The mere fact that a theft occurred is not enough to show defendant was negligent. Rather, Plaintiff must also show that Defendant breached a duty of ordinary or reasonable care. *McCrary v. Dept. of Rehab. & Corr.* (1988), 45 Ohio Misc. 2d

3 (Ct. of Claims); *Forney v. Ohio Dept. of Rehab. & Corr.* (1995), 94-02185-AD. The fact that Plaintiff was supplied with a locker box and lock to secure his valuables constitutes *prima facie* evidence of Defendant discharging its duty of reasonable care. *McCrary*, supra; *Forney*, supra. As Plaintiff has failed to state a claim for which relief can be granted, the complaint must be dismissed."

{¶5} Plaintiff has not responded to defendant's motion to dismiss.

{¶6} Civ. R. 12(B) allows defendant to assert the defense of failure to state a claim upon which relief can be granted by motion.

{¶7} The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra. Defendant is not responsible for the 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. 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. Dept. of Rehab. & Corr.* (1987), 86-02635-AD. Finally, plaintiff has made no allegation as to how or why defendant is responsible for the theft of his personal property.

{¶8} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

DRB/laa  
3/31  
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