

[Cite as *Prater v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-3281.]

IN THE COURT OF CLAIMS OF OHIO

WILLIE PRATER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-01281-AD
 :
 DEPT. OF REHABILITATION AND : MEMORANDUM DECISION
 CORRECTIONS :
 :
 Defendant :
 :
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FINDINGS OF FACT

{¶1} 1) On or about September 6, 2003, plaintiff, Willie Prater, an inmate incarcerated at defendant's North Central Correctional Institution (NCCI), was transferred from the institution's general population to a segregation unit.

{¶2} 2) Plaintiff stated, that at the time of this transfer, all of his personal property, with the exception of his television set, was stored inside his locker box. All of plaintiff's property was delivered into the custody of NCCI staff incident to the September 6, 2003 transfer.

{¶3} 3) On or about September 25, 2003, plaintiff was released from segregation and regained possession of his property. Plaintiff asserted NCCI personnel failed to return several items of his personal property upon his release from segregation.

{¶4} 4) Plaintiff listed the following unreturned items: a headphone kit, 2 bath towels, 2 wash cloths, 2 sweatshirts, 2 pairs of sweat pants, a robe, a personal blanket, 2 pairs of gym shorts,

12 cassette tapes, headphones, and multiple items purchased from the institution commissary, including foodstuffs, tobacco products, and hygiene items. Plaintiff filed this complaint seeking to recover \$357.92, the estimated replacement cost of his alleged missing property. Plaintiff also claimed damages for recovery of the filing fee, plus postage and copying costs. Postage and copying costs are not compensable damage elements in a claim of this type. This issue will not be further addressed. Plaintiff's total damage claim is set at \$382.92.

{¶5} 5) Defendant denied packing or exercising control over the property claimed by plaintiff. Defendant has no record of receiving the property claimed incident to plaintiff's transfer.

{¶6} 6) On April 8, 2004, plaintiff submitted a response to defendant's investigation report. Plaintiff contended NCCI personnel delayed packing his property on September 6, 2003, thereby allowing an unidentified thief to steal items from his locked locker box. Plaintiff implied defendant breached a duty to promptly pack his property.

CONCLUSIONS OF LAW

{¶7} 1) Although not strictly responsible for a prisoner's property, defendant had at least a 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} 2) 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} 3) 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.

{¶10} 4) 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 with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶11} 5) 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.

{¶12} 6) 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.

{¶13} 7) 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.

{¶14} 8) Plaintiff may show defendant breached its duty of reasonable care by providing evidence of an unreasonable delay in packing inmate property. *Springer v. Marion Correctional Institution* (1981), 81-05202-AD.

{¶15} 9) However, in the instant claim, plaintiff has failed to prove any delay in packing his inmate property resulted in any property theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD.

{¶16} 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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