

[Cite as *Gould v. Toledo Correctional Inst.*, 2004-Ohio-3494.]

IN THE COURT OF CLAIMS OF OHIO

CHRISTOPHER A. GOULD :
Plaintiff :
v. : CASE NO. 2003-09751-AD
TOLEDO CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
:.....

FINDINGS OF FACT

{¶1} 1) On April 8, 2003, at approximately 1:14 p.m., plaintiff, Christopher A. Gould, an inmate incarcerated at defendant, Toledo Correctional Institution (TCI), purchased several sundry items at the institution commissary. After making his purchases, plaintiff returned to his cell and placed the commissary items inside his locker box.

{¶2} 2) At about 4:30 p.m., on April 8, 2003, plaintiff left his cell to report to his work assignment. Plaintiff stated he locked his cell door upon leaving for his work assignment. Plaintiff asserted that when he returned from work at approximately 6:00 p.m., he discovered the door to his cell was wide open and the commissary items were missing from his locker box.

{¶3} 3) Plaintiff has alleged the door to his cell was deliberately unlocked by a TCI employee thereby facilitating the theft of property items stored in his locker box. Consequently, plaintiff filed this complaint seeking to recover \$35.51, the

replacement cost of his stolen property. Plaintiff was not required to submit a filing fee.

{¶4} 4) Plaintiff reported the theft of his property at approximately 6:55 p.m. on April 8, 2003. TCI staff conducted a prompt, but fruitless search after being informed of the theft. Personnel investigating the theft noted plaintiff left his cell unsecured.

{¶5} 5) Defendant has contended plaintiff did not provide evidence to prove his property loss was proximately caused by any negligent act or omission on the part of TCI employees. Contrary to plaintiff's allegations, defendant argued plaintiff left his cell door unsecured, thereby facilitating the theft of his property.

{¶6} 6) On January 29, 2004, plaintiff submitted a response to defendant's investigation report. Plaintiff denied leaving the door to his cell unsecured, but insisted TCI officers unlocked his cell door on April 8, 2003. Plaintiff alleged the theft report of the April 8, 2003 incident, submitted by defendant was a false report compiled at some time after the original nonsubmitted report was completed.

CONCLUSIONS OF LAW

{¶7} 1) The mere fact that a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-0791-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams, supra*.

{¶8} 2) Defendant is not responsible for theft 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.

{¶9} 3) The fact defendant supplied plaintiff with a locker box 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.

{¶10} 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.

{¶11} 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.

{¶12} 6) Defendant, when it retains control over whether an inmate's cell door is to be open or closed, owes a duty of reasonable care to inmates who are exclusively forced to store their possessions in the cell while they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD.

{¶13} 7) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to lock his cell door, and therefore, no liability shall attach to defendant as a result of any theft. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD. Furthermore, in a circumstance where a plaintiff inmate is permitted to lock and capable of manually locking his own cell door, defendant is not charged with a duty to lock the cell door, notwithstanding a situation where an inmate plaintiff requests his cell door be locked by defendant's agents. *Zimmerman v. Lebanon Correctional Inst.* (1998), 97-01350-AD.

{¶14} 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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