

[Cite as *Thomas v. Warren Correctional Inst.*, 2005-Ohio-6586.]

IN THE COURT OF CLAIMS OF OHIO

QUARNAIL THOMAS :  
Plaintiff :  
v. : CASE NO. 2005-07224-AD  
WARREN CORRECTIONAL INST. : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On or about July 30, 2004 or July 31, 2004, plaintiff, Quarnail Thomas, an inmate incarcerated at defendant, Warren Correctional Institution ("WCI"), was transferred from the institution's general population to a segregation unit.

{¶ 2} 2) Plaintiff alleged that while he was being transferred to the segregation unit, unidentified inmates entered his cell and stole his twenty cassette tapes, headphones, cherry drinks, and deodorant sticks.

{¶ 3} 3) Additionally, plaintiff explained he had previously ordered and purchased three no-bake cheesecakes for a fund raiser sponsored by the WCI Stamp Club. Plaintiff pointed out while he was confined to segregation the cheesecakes he purchased arrived at WCI and were set for distribution. Due to the fact plaintiff was housed in a segregation unit, he was unable to retrieve the cheesecakes he had purchased. Plaintiff asserted he never received the cheesecakes from the WCI Stamp Club and he did not receive a refund for the purchase he had made.

{¶ 4} 4) Plaintiff filed this complaint seeking to recover

\$318.02, the estimated replacement cost of his alleged stolen property, plus the purchase price of the no-bake cheesecakes he ordered, but did not receive.

{¶ 5} 5) On September 13, 2004, plaintiff reported his cassette tapes, headphones, deodorant, and cherry drinks were stolen from his cell on July 30, 2004. WCI staff did not continue an investigation after the September 13, 2004, theft was reported. According to language in the theft report, plaintiff himself advised that no further investigation of the July 30, 2004, incident was needed.

{¶ 6} 6) Defendant denied any liability in this matter. Defendant contended plaintiff failed to produce evidence proving his property was stolen as a result of any negligent act or omission on the part of WCI staff. Defendant acknowledged plaintiff did not receive his cheesecake desserts and did not receive a refund for his purchase. Defendant related plaintiff was aware at the time he ordered the cheesecake desserts that he could not receive the ordered desserts if he was in segregation at the time of delivery. The order form for desserts bears the disclaimer, "[i]f you are in seg (segregation) and found guilty, you will 'NOT' receive a refund or product ordered." Defendant maintained this disclaimer constitutes a waiver of any claim plaintiff may have pursued for non-delivery of the cheesecake desserts.

{¶ 7} 7) Plaintiff argued defendant should bear liability for the loss of his alleged stolen property, because WCI personnel did not conduct a search for the property items after being informed of a theft. Plaintiff suggested defendant's employees knew the identity of the individuals who allegedly stole property from his cell. Plaintiff stated he reported the alleged theft to defendant on July 31, 2004, the date plaintiff maintained the incident

occurred in his complaint and in his response to defendant's investigation report. No theft report was compiled on July 31, 2004. There is no supporting evidence plaintiff reported a theft on July 31, 2004.

{¶ 8} 8) Plaintiff recalled he tried to rescind his order for the cheesecake desserts by requesting the WCI cashier stop payment of any funds from his inmate account to the WCI Stamp Club. Plaintiff noted his request to stop payment was ignored.

#### CONCLUSIONS OF LAW

{¶ 9} 1) When plaintiff ordered the cheesecake desserts he agreed to the terms and conditions of purchase which included the provision: "[i]f you are in seg and found guilty, you will 'NOT' receive a refund or product ordered." Plaintiff was aware of this provision and seemingly agreed to this condition when he ordered the product. Consequently, plaintiff waived any claim regarding a refund of funds paid or receipt of the product purchased. See *Bradsher v. Ohio Department of Rehabilitation and Correction*, 2003-04627-AD; 2003-Ohio-4490.

{¶ 10} 2) The mere allegation a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶ 11} 3) 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} 4) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the 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.

{¶ 13} 5) Plaintiff has the burden of proving, by a preponderance of the evidence, he suffered a loss that was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶ 14} 6) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD.

{¶ 15} 7) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, the court held that defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. In the instant case, the alleged stolen property was indistinguishable and, therefore, no duty to search arose.

{¶ 16} 8) Plaintiff has failed to prove, by a preponderance of the evidence, that defendant was negligent in respect to making any attempts to recover distinguishable stolen property. Consequently, plaintiff has failed to prove he suffered any property loss as a result of negligence on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

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QUARNAIL THOMAS :  
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WARREN CORRECTIONAL INST. : ENTRY OF ADMINISTRATIVE  
Defendant : DETERMINATION

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Quarnail Thomas, #215-290  
P.O. Box 120 S.R. 63  
Lebanon, Ohio 45036

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel  
Department of Rehabilitation  
and Correction  
1050 Freeway Drive North  
Columbus, Ohio 43229

For Defendant

RDK/laa  
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