

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

LAMOND JOHNSON

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2007-04605-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF ACT

{¶1} 1) Plaintiff, Lamond Johnson, an inmate formerly incarcerated at defendant, Ohio State Penitentiary (“OSP”), asserted his eyeglasses were confiscated and destroyed by OSP employee, John Whitman, on April 18, 2007. Plaintiff related Whitman entered his cell while he was absent and “viciously destroyed” his eyewear.

{¶2} 2) Plaintiff filed this complaint seeking to recover the replacement value of his eyeglasses. Plaintiff also requested damages for emotional distress attendant to the loss of his eyeglasses. Plaintiff was not required to pay a filing fee.

{¶3} 3) Defendant acknowledged plaintiff’s eyeglasses were confiscated due to the fact the property had been altered. Defendant explained plaintiff was issued a conduct report for possession of contraband and the altered eyeglasses were subsequently destroyed “pursuant to proper procedure for contraband property.” Defendant further explained the eyeglasses plaintiff had altered were state-issue eyewear and subsequently replacement state-issue glasses were given to plaintiff.

{¶4} 4) Plaintiff filed a response insisting the confiscated eyeglasses were not altered. Plaintiff related he subsequently did receive a pair of replacement glasses, but “[t]he eyeglasses were not replaced until several complaints were filed.” Plaintiff alleged his legal mail was “torn” by OSP employee, Whitman. Plaintiff claimed he has suffered damages described as loss of sleep, loss of equilibrium, and loss of trust in

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defendant. Plaintiff has not offered any proof to establish he has suffered any physical or mental distress attributable to the acts of defendant on or after April 18, 2007.

CONCLUSIONS OF LAW

{15} 1) Initially, it should be noted that this court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056. Also, the Supreme Court of Ohio has held that recovery for negligent infliction of severe emotional distress is limited to instances “where the plaintiff has either witnessed or experienced a dangerous accident and/or was subjected to physical peril.” *Heiner v. Moretuzzo*, 73 Ohio St. 3d 80, 86-87, 1995-Ohio-65, 652 N.E. 2d 664. Plaintiff has failed to prove such an emotional circumstance existed in his description of the events of April 18, 2007.

{16} 2) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{17} 3) Plaintiff has the burden of proving, by a preponderance of the

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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.

{¶18} 4) 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. However, plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, 2005-05183-AD; jud, 2005-Ohio-4320; *Griffin v. Ohio Department of Corrections*, 2005-08271-AD, 2006-Ohio-7150. Furthermore, this court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Consequently, plaintiff's claim for the loss of state

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issued property items such as eyeglasses is denied since he has failed to offer sufficient proof to show he owned the property. See *Sanford v. Ross Correctional Inst.*, 2006-03494-AD, 2006-Ohio-7311.

{19} 5) Plaintiff has failed to prove, by a preponderance of the evidence, any additional property claimed was destroyed as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

[Cite as *Johnson v. Ohio State Penitentiary*, 2008-Ohio-1769.]

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
1/11
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