

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RONALD ROBINSON,

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

OPINION AND
ORDER

00-C-379-C

In this civil action for monetary relief, plaintiff Ronald Robinson has filed suit against defendant United States of America, alleging that some of his personal property was never returned to him after he was moved into a different unit and transferred to another prison in violation of the Federal Tort Claims Act, 28 U.S.C. § 2671 - 2680. Jurisdiction is present under 28 U.S.C. § 1331.

Presently before the court are plaintiff's and defendant's cross-motions for summary judgment. Because I find that plaintiff has failed to submit any evidence establishing that defendant's negligence caused the loss of plaintiff's personal property, defendant's motion for summary judgment will be granted and plaintiff's motion for summary judgment will be denied.

As a preliminary matter, I note that in an order entered September 21, 2001, I denied plaintiff's initial motion for summary judgment because it was not in conformance with this court's procedures on motions for summary judgment. In support of that motion, plaintiff submitted a single document in which he moved for summary judgment, made legal arguments and set forth factual propositions. In addition, he did not follow each proposed fact with a cite to evidence in the record to support the proposition. Finally, when plaintiff did cite to documentary evidence in the court's record, the reference was to one or more exhibits attached to his original complaint or to exhibits attached to his motion for summary judgment. When plaintiff filed the current motion for summary judgment, he submitted the motion, the brief and the proposed findings of fact as separate documents in conformance with this court's procedures. Plaintiff also submitted an affidavit in which he declared under penalty of perjury that the documents are what they purport to be. However, for the most part, plaintiff failed to follow his proposed facts with a cite in the record to support the proposition. Plaintiff asserts that he is not a lawyer and should not be held to the same standards as one. However, because plaintiff has been given due notice that he must follow this court's procedures, I have not considered any of plaintiff's facts that are not supported properly and sufficiently by admissible evidence. I note also that plaintiff continues to focus on a claim that prison officials retaliated against him for exercising the right of access to the courts despite the fact that his retaliation claim was dismissed in an order entered in this

case on April 5, 2001, for failure to exhaust administrative remedies. I have not considered any facts that relate to his retaliation claim.

From the proposed findings of fact submitted by the parties, I find the following facts to be material and undisputed.

FACTS

Plaintiff Ronald Robinson is incarcerated at the Federal Correctional Institution in Memphis, Tennessee. In September 1998, he was incarcerated at the Federal Correctional Institution in Oxford, Wisconsin, which is operated by the Bureau of Prisons, an agency of defendant United States of America. On September 17, 1998, plaintiff was placed in the Special Housing Unit after Bureau of Prison officials discovered a weapon in his cell. Plaintiff believes that he did not receive all of his personal property, including a sweat shirt and sweat pants, after he was transferred into the Special Housing Unit. On September 17 and 18, 1998, Senior Officer Specialist Gregory Lee inventoried plaintiff's personal property with plaintiff. Plaintiff signed section 10(a) of the three inventory forms that states, "I have today reviewed the property returned to me," without indicating that any of his property was missing in the comments section. The inventory form states that "[i]f the inmate states that there is missing or damages property, this information should be noted under Comments."

Before inmates are transferred from any Bureau of Prisons facility, they have the

opportunity to inventory their property with a staff member. On November 4, 1998, plaintiff and retired Bureau of Prison staff member Terry Goheen executed two property forms. Plaintiff signed section 10(a) of the two forms and did not note any discrepancies in the comments section. There are no notations on the forms that indicate that plaintiff possessed a sweat shirt or sweat pants when he left the Federal Correctional Institution in Oxford.

On November 5, 1998, plaintiff was transferred to the United States Penitentiary in Leavenworth, Kansas. On December 8, 1998, Larry Fryman, a senior inmate systems officer at the United States Penitentiary in Leavenworth, inventoried plaintiff's personal property with plaintiff. The value of the personal property listed on the inventory sheet totaled approximately \$288. Plaintiff signed section 10(a) of the two forms without noting any discrepancies in the comments section.

OPINION

A. Summary Judgment Standard

Summary judgment is appropriate if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Weicherding v. Riegel, 160 F.3d 1139, 1142 (7th Cir. 1998). All evidence and inferences must be viewed in the light most favorable to the non-moving party. Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 250 (1986). However, the non-moving party must set forth specific facts sufficient to raise a genuine issue for trial. Celotex v. Catrett, 477 U.S. 317, 324 (1986).

B. Federal Torts Claim Act

Plaintiff alleges that some of his personal property was never returned to him after he was moved into the Special Housing Unit in September 1998 and later transferred to prison in Leavenworth, Kansas. Although it is not clear from plaintiff's argument, I assume that plaintiff is alleging that defendant lost some of his personal property during each transfer. The Federal Tort Claims Act, 28 U.S.C. §§ 2671 - 2680, provides in part that the United States "shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674. Cognizable claims under the act include those that are: (1) against the United States; (2) for money damages; (3) for injury or loss of property; (4) caused by the negligent or wrongful act or omission of any employee of the Government; (5) while acting within the scope of his office or employment; (6) under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See 28 U.S.C. § 1346(b)(1); Federal Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 477 (1994) (claim against United States is cognizable under

act if it alleges six elements outlined above).

In this case, defendant argues that the admissible evidence indicates that plaintiff received all of his personal property when he was moved into the Special Housing Unit at Oxford and to Leavenworth. When plaintiff was moved from his cell to the Special Housing Unit at Oxford, he signed three property forms and did not note that he was missing any property. The day before he was transferred to Leavenworth, he signed two more property forms and made no annotation that he was missing any personal property. After plaintiff arrived at Leavenworth, he signed two property forms acknowledging receipt of his property and failed to identify any missing personal property. According to defendant, by signing the property forms each time without noting that he was missing any personal property in the comments section, plaintiff cannot establish that defendant was negligent in handling his property. I agree. If anything, the forms suggest that prison officials followed proper procedure.

Plaintiff argues that when he signed the property forms, he did so in order to accept whatever personal property of his was delivered to him, not to verify that he had received all of his personal property. Plaintiff alleges that a property form completed before he was transferred to Oxford shows that he possessed a sweat shirt but that none of the property forms completed at the time of his transfer to the Special Housing Unit or to Leavenworth indicate that he possessed a sweat shirt. Plaintiff also alleges that a commissary receipt

shows that he purchased many items but that the inventory forms do not identify these items. Even if I were to consider these allegations that were not properly proposed as facts, they would not establish that defendant's negligence led to plaintiff's loss of personal property. Plaintiff has presented no admissible evidence establishing that he had certain personal property at one point and that defendant took that property into its possession and subsequently failed to return it to plaintiff. In short, there is simply no evidence that defendant was negligent in handling plaintiff's personal property. Accordingly, I will grant defendant's motion for summary judgment and deny plaintiff's motion for summary judgment.

ORDER

IT IS ORDERED that

1. Defendant United States of America's motion for summary judgment is GRANTED. Plaintiff Ronald Robinson's motion for summary judgment is DENIED.

2. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 4th day of December, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge