

IN THE COURT OF CLAIMS OF OHIO

DONALD STEWART, SR., #237-580	:	
16149 St. Rt. 104	:	
P.O. Box 7010	:	Case No. 2002-05221-AD
Chillicothe, Ohio 45601	:	
	:	
Plaintiff	:	MEMORANDUM DECISION
	:	
v.	:	
	:	
ROSS CORRECTIONAL INSTITUTION	:	
	:	
Defendant	:	
	:	
: : : : : : : : : : : : : : : :		

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

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FINDINGS OF FACT

{¶1} 1) On or about March 1, 2002, plaintiff, Donald Stewart, Sr., an inmate incarcerated at defendant, Ross Correctional Institution (RCI), was transferred from the institution's general population to an isolation unit.

{¶2} 2) Incident to his transfer, plaintiff's personal property was inventoried, packed, and delivered into the custody of RCI staff. Plaintiff's property was stored in the RCI property vault during the time he was assigned to the isolation unit.

{¶3} 3) Plaintiff indicated when he was given an opportunity to inspect his property on March 4, 2002, he discovered several items were missing from his pack-up. Plaintiff speculated his property was either thrown away by defendant's personnel or stolen

while under defendant's control.

{¶4} 4) Plaintiff explained his missing property included the following: 18 publications (books and magazines), 1 pair of headphones (Sony), 2 pairs of boots (Fila & Texas Steer), 2 pairs of sweat pants, 2 pairs of gym shorts, 1 set of pajamas, 3 towels, 2 wash cloths, 1 belt, 4 pairs of undershorts, 4 markers, assorted colored pencils, 1 needle and thread, 1 shoe paste, 6 cassette tapes, 5 envelopes, 3 bags of microwave popcorn, 2 granola bars, ½ jar of instant coffee, ½ can of tobacco, ½ container of ice tea mix, 1 coffee creamer, and 1 white prayer Kafia. Plaintiff filed this claim seeking to recover \$538.57, the estimated total replacement cost of his alleged missing property.

{¶5} 5) Defendant has admitted liability for the loss of a cassette tape, 2 pairs of undershorts, 5 envelopes, 5 magazines, and 8 books. Defendant has acknowledged plaintiff suffered property loss damages in the amount of \$29.35, plus a reasonable amount for the loss of the books. Defendant denied any other property items were lost or misplaced while under its control. Defendant denied any remaining property was lost or stolen as a proximate result of any negligent act or omission on the part of its personnel.

{¶6} 6) Evidence has shown defendant's staff did not pack plaintiff's boots, gym shorts, pajamas, belt, thread and needle, shoe paste, popcorn, granola bars, coffee, tobacco, ice tea mix, coffee creamer, and Kafia on March 1, 2002. Defendant's staff did not receive delivery of these articles. Evidence has established defendant packed 27 books and magazines, a set of headphones, 3 towels, 2 pairs of sweat pants, a wash cloth, markers, pencils, 10 cassette tapes, and 12 pairs of undershorts on or about March 1, 2002. Evidence indicated plaintiff possessed 10 books and magazines, a set of headphones, 2 pairs of sweat pants, 3 towels, 1 wash cloth, markers, pencils, 9 cassette tapes, and 2 pairs of undershorts on May 7, 2002. Plaintiff submitted evidence showing

he possessed books and magazines, a set of headphones, 2 pairs of boots, 4 pairs of sweat pants, 2 pairs of gym shorts, a set of pajamas, 7 towels, 3 wash cloths, 1 belt, 6 pairs of undershorts, markers, pencils, and 15 cassette tapes on December 13, 2001. Plaintiff filed a response stating he would accept a damage award of \$204.83 as settlement for this claim.

CONCLUSIONS OF LAW

{¶7} 1) 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.

{¶8} 2) 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.

{¶9} 3) 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.

{¶10} 4) Negligence has been shown in respect to the loss of plaintiff's cassette tapes, undershorts, envelopes, magazines, and books. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶11} 5) Plaintiff's failure to prove delivery of certain articles 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.

{¶12} 6) Plaintiff has failed to prove, by a preponderance of the evidence, other property items were lost or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and*

Correction (1998), 97-10146-AD.

{¶13} 7) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶14} 8) Defendant is liable to plaintiff in the amount of \$125.00.

{¶15} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is GRANTED in part and DENIED in part;

{¶18} 2) Defendant (Ross Correctional Institution) pay plaintiff (Donald Stewart, Sr.) \$125.00 and such interest as is allowed by law;

{¶19} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

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