

# 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](http://www.cco.state.oh.us)

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BETTY L. WALLINGFORD

Case No. 2006-04466-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO VETERANS HOME

Defendant

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## FINDINGS OF FACT

{¶1} 1) On September 8, 2005, George Wallingford, an eighty-nine year old veteran, entered the facility of defendant, Ohio Veterans Home, and was placed under the care of defendant's staff. On November 16, 2005, during a mealtime period, George Wallingford's dentures were lost. The dentures were subsequently replaced at a cost of \$2,240.00 and were paid for by plaintiff, Betty L. Wallingford, the wife of George Wallingford.

{¶2} 2) Before and after the dentures were lost, Kenneth Wallingford, the son of George and Betty Wallingford, who has power of attorney for his parents, advised defendant's staff that George Wallingford habitually removed his dentures after eating. On January 12, 2006, Kenneth Wallingford attended an "Interdisciplinary Team Conference" with defendant's personnel to discuss his father's care, particularly emphasizing the issue regarding lost dentures. Written notes from this conference were submitted. The notes recorded Kenneth Wallingford expressed concern about his father losing his dentures and wanted defendant's staff to set up a procedure to ensure George Wallingford's dentures were accounted for after every meal. Also, according to the conference notes, Kenneth Wallingford reported his father tended to place his dentures in his clothing pockets, and therefore wanted defendant's staff to check the pockets of George Wallingford's clothing for his dentures every time clothing items were to be sent for laundering.

Case No. 2006-04466-AD	- 2 -	MEMORANDUM DECISION
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{¶3} 3) On or about February 21, 2006, George Wallingford's replacement dentures were lost at defendant's facility. Plaintiff, Betty L. Wallingford, filed this complaint seeking to recover \$2,240.00, the cost of another set of dentures. Plaintiff asserted defendant should bear liability for the loss of the dentures after being advised of George Wallingford's habits in respect to handling his dentures. Plaintiff implied the dentures were lost while under the custody and control of defendant's personnel. The filing fee was paid.

{¶4} 4) Defendant acknowledged George Wallingford's dentures were lost on two occasions while he was a resident at defendant's home. However, defendant specifically denied the dentures were lost on either occasion by any Ohio Veterans Home personnel. Defendant denied any responsibility for the loss and denied making any assurances that the dentures would be guarded from loss. Defendant denied ever receiving delivery of the dentures and consequently asserted no bailment relationship existed between George Wallingford and the Ohio Veterans Home in regard to the dentures. Defendant related Kenneth Wallingford's requests before the Interdisciplinary Team Conference did not create any legal responsibility for the loss of George Wallingford's dentures.

#### CONCLUSIONS OF LAW

{¶5} Defendant is under a duty to exercise ordinary care to protect personal property delivered into its possession. *Leech v. Ohio State University Hospital* (1989), 89-07875-AD; *Ahmed v. Ohio State Hospitals* (1999), 97-10812-AD. However, plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶6} Although strict rules of evidence do not apply in administrative determinations, plaintiffs must prove their case by a preponderance of the evidence. *Underwood v. Dept. of Rehabilitation and Correction* (1985), 84-04053-AD. "It is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a

Case No. 2006-04466-AD	- 3 -	MEMORANDUM DECISION
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reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice, among different possibilities as to any issue in the case, he fails to sustain such burden.” (paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.) *Kata v. Second National Bank of Warren* (1971), 26 Ohio St. 2d 210, Syllabus 2.

{¶7} Plaintiff has failed to submit any evidence to show defendant received delivery on February 21, 2006, of dentures owned by George Wallingford. This failure to prove delivery constitutes failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD; *Camella v. Ohio Veterans Home* (2006), 2006-01491-AD.

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ENTRY OF ADMINISTRATIVE  
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:

Wendall Sullivan  
8006 Beechmont Avenue  
Cincinnati, Ohio 45255

Attorney for Plaintiff

Gregory J. Kowalski  
Chief Legal Counsel  
Ohio Veterans' Home Agency  
3416 Columbus Avenue  
Sandusky, Ohio 44870

For Defendant

RDK/laa  
11/30  
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