

# 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

RAYMOND PRATT

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2009-04807-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On December 3, 2008, plaintiff, Raymond Pratt, a former inmate incarcerated at defendant's London Correctional Institution ("LoCI"), authorized the mailing of a pair of Converse gym shoes from LoCI to the vendor, Access Secure Pak in St. Louis, Missouri. Plaintiff submitted documentary evidence showing \$6.60 was withdrawn from his inmate account on December 8, 2008 to pay for postage costs. Plaintiff indicated the shoes were mailed by LoCI personnel.

{¶ 2} 2) Plaintiff related he was told the shoes were never delivered to Access Secure Pak and are presumed lost. Plaintiff asserted defendant should bear liability for the total replacement cost of the shoes and he has consequently filed this complaint seeking to recover \$100.00, an amount representing a claim for the cost of the shoes, \$49.91, plus \$58.09 for "unnecessary stress." Payment of the filing fee was waived.

{¶ 3} 3) Defendant asserted the shoes were mailed uninsured by regular U.S. mail. Defendant contended it cannot be held liable for the loss of any inmate property once that property is mailed from the institution.

{¶ 4} 4) Despite filing a response, plaintiff did not produce any evidence to establish the shoes were lost while under the control of LoCI staff.

#### CONCLUSIONS OF LAW

{¶ 5} 1) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 6} 2) "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided by . . . the court . . ." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d 744, 2003-Ohio-5333, 798 N.E. 2d 1121, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 7} 3) 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} 4) 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} 5) 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} 6) 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; *Waver v. Ohio Dept. of Corr.*, Ct. of Cl. No. 2006-02960-AD, 2006-Ohio-7250.

{¶ 11} 7) Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.*

(1989), 89-12968-AD; *Frazier v. Mansfield Corr. Inst.*, Ct. of Cl. No. 2005-09375-AD, 2006-Ohio-5670.

{¶ 12} 8) Plaintiff has failed to prove, by a preponderance of the evidence, his gym shoes were lost and unrecovered as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
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