

[Cite as *Oyer v. Chillicothe Correctional Inst.*, 2002-Ohio-4565.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES E. OYER, #277-290 :
15802 St. Rt. #104 N.
Chillicothe, Ohio 45601-0990 : Case No. 2002-02035-AD

Plaintiff : MEMORANDUM DECISION

v. :

CHILLICOTHE C.I. :

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) Plaintiff, Charles E. Oyer, an inmate incarcerated at defendant, Chillicothe Correctional Institution, has asserted his eyeglasses were stolen from his cell on December 30, 2001.

“2) Defendant conducted a prompt, but fruitless search after being informed of the theft.

“3) Plaintiff consequently filed this complaint seeking to recover \$125.00, the cost of a replacement pair of eyeglasses, plus \$3.00, the cost of a medical co-pay for an eye examination.

“4) Defendant denied any liability in this matter. Defendant explained plaintiff’s eyeglasses were stolen. Defendant denied any responsibility for the theft. Furthermore, defendant maintained plaintiff received a replacement pair of eyeglasses free of charge. Defendant asserted plaintiff was properly charged a medical co-pay for an eye examination.

“5) Plaintiff filed a response insisting defendant should be held liable for the loss of his eyeglasses. Plaintiff also contended he should receive reimbursement for his medical co-pay assessed.

CONCLUSIONS OF LAW

“1) Plaintiff’s claim for medical co-pay reimbursement is denied. Defendant acted properly in accordance with the Ohio Revised Code and the Ohio Administrative Code in assessing plaintiff a co-pay amount. See *Perotti v. Southern Ohio Correctional Facility* (1999), 98-07033-AD.

“2) The mere fact that a theft occurred is insufficient to show defendant’s negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

“3) Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

“4) 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.

“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.

“6) 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.

“7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

“8) R.C. 2743.02(D) states: “Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.” Therefore, the act of supplying plaintiff with a replacement pair of eyeglasses free of charge constituted a collateral recovery under R.C. 2743.02(D). Plaintiff was not damaged by the loss of his eyeglasses.

Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

IT IS ORDERED THAT:

- “1) Plaintiff’s claim is DENIED and judgment is rendered in favor of defendant;
- “2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk