

IN THE COURT OF CLAIMS OF OHIO

D-NANZKAI N. TERRELL, #28814 :
1470 Collins Avenue :
Marysville, Ohio 43040 : Case No. 2002-02141-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO REFORMATORY FOR WOMEN :

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 10, 2000, plaintiff, D-Nanzkai N. Terrell, an inmate incarcerated at defendant's Ohio Reformatory for Women, was transferred from the institution's general population to a segregation unit. Plaintiff was subsequently transferred to Oakwood Correctional Facility and then returned to a segregation unit at the Ohio Reformatory for Women.

{¶2} 2) According to plaintiff, defendant's personnel exercised control over her property incident to all transfers beginning on March 10, 2000. However, neither plaintiff nor

defendant submitted any property inventory of plaintiff's property compiled at the time of her transfers.

{¶3} 3) Plaintiff alleged that on January 9, 2002, defendant's employee, Sgt. Thompson, attempted to retrieve plaintiff's property held in storage. Plaintiff further alleged none of her property could be located with the exception of her television set, which she claimed was totally destroyed while under defendant's custody.

{¶4} 4) Plaintiff asserted the following items were lost while stored in defendant's vault:

{¶5} 1 hat

{¶6} 1 pair of gloves

{¶7} 1 head scarf

{¶8} 8 pairs of tights

{¶9} 1 walkman with headphones

{¶10} 2 pairs of long underwear

{¶11} 2 wash cloths

{¶12} 1 set of headphones

{¶13} photographs

{¶14} underwear

{¶15} 3 pairs of socks

{¶16} 1 cup with a straw

{¶17} 2 towels

{¶18} 1 sweat suit

- {¶19} commissary articles
- {¶20} 2 t-shirts
- {¶21} pajamas
- {¶22} 2 belts
- {¶23} 1 trash can
- {¶24} 2 mirrors
- {¶25} 1 watch
- {¶26} 1 cross with chain
- {¶27} assorted makeup
- {¶28} assorted hair care products
- {¶29} 1 pencil sharpener
- {¶30} 1 pair of sunglasses
- {¶31} 1 photo album
- {¶32} 1 umbrella
- {¶33} 1 pair of earrings
- {¶34} 14 cassette tapes
- {¶35} 1 pair of glasses
- {¶36} 1 pair of scissors.

{¶37} 5) Plaintiff filed this complaint seeking to recover \$1,615.50, the estimated value of her alleged missing and alleged damaged property. On February 21, 2002, plaintiff submitted the filing fee.

{¶38} 6) Defendant admitted liability in the amount of \$35.00 for the loss of plaintiff's towels, wash cloths, and a pair of

gloves. Defendant specifically denied plaintiff's television set was damaged and defendant has indicated the set is in good working order. Defendant explained some of the property plaintiff claimed as missing has been located. Furthermore, defendant asserted the bulk of the alleged missing property items were either never delivered into its custody or were donated by plaintiff. Additionally, defendant contended plaintiff has failed to prove she owned the remaining articles.

{¶39} 7) Plaintiff filed a response. Plaintiff did not submit any evidence to substantiate her allegations.

CONCLUSIONS OF LAW

{¶40} 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.

{¶41} 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.

{¶42} 3) 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.

{¶43} 4) 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.

{¶44} 5) In respect to the loss of certain designated property items claimed plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶45} 6) However, plaintiff has failed to prove, by a preponderance of the evidence, other property items were lost or stolen as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶46} 7) Plaintiff's failure to prove delivery of certain property items to defendant constitutes a 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.

{¶47} 8) Plaintiff has failed to show any causal connection between any damage to her television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶48} 9) 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.

{¶49} 10) A plaintiff is competent to testify with respect to the true value of his property. *Gaiter v. Lima Correctional Facility* (1988), 61 Ohio Misc. 2d 293.

{¶50} 11) The court finds defendant liable to plaintiff in the amount of \$45.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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

{¶52} IT IS ORDERED THAT:

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

{¶54} 2) Defendant (Ohio Reformatory for Women) pay plaintiff (D-Nanzkai N. Terrell) \$70.00 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk