

IN THE COURT OF CLAIMS OF OHIO

ALVIN KING, #224-312	:	
P.O. Box 788	:	
Mansfield, Ohio 44901	:	Case No. 2002-03333-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
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 January 21, 2001, mail room personnel at the Mansfield Correctional Institution, received a pair of gym shoes from an approved vendor intended for plaintiff, Alvin King, an inmate. Plaintiff had previously ordered the shoes paying a total of \$63.99 for the items.

{¶2} 2) Plaintiff contended he was told he could not keep the gym shoes due to the fact the shoes did not conform to institutional policy. According to plaintiff the shoes were assessed as violative of institutional policy because the articles were not a solid color.

{¶3} 3) Plaintiff indicated he mailed the shoes back to the approved vendor. Plaintiff subsequently filed this complaint

seeking to recover \$63.99, the purchase price of the disallowed gym shoes.

{¶4} 4) Evidence has been submitted to show the gym shoes were mailed back to the vendor by Mansfield Correctional Institution staff on February 1, 2001. The vendor has seemingly denied receiving the shoes and has consequently refused to send plaintiff a refund or a replacement pair of shoes. Defendant has suggested the mailed shoes were either lost while in the mail system or by the vendor after receipt.

CONCLUSIONS OF LAW

{¶5} 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, by that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶6} 2) 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.* (1990), 89-12968-AD.

{¶7} 3) The state cannot be sued for the exercise of any executive planning function involving the making of a policy decision characterized by a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.

{¶8} 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.

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

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

{¶12} IT IS ORDERED THAT:

{¶13} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶14} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

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