

IN THE COURT OF CLAIMS OF OHIO

KENNETH L. FAIRCLOTH, #A260-063:

P.O. Box 57

Marion, Ohio 43301

: Case No. 2002-02353-AD

Plaintiff

: MEMORANDUM DECISION

v.

:

LEBANON CORRECTIONAL  
INSTITUTION

:

:

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 May 11, 2001, plaintiff, Kenneth L. Faircloth, an inmate incarcerated at defendant, Lebanon Correctional Institution (LeCI), was medically transferred to the institution infirmary. On May 21, 2001, plaintiff was transferred again to the Corrections Medical Center (CMC). On June 18, 2001, plaintiff was released from CMC, but did not return to LeCI. Instead, plaintiff was assigned to the Madison Correctional Institution (MACI), and he and his personal property which had been left at LeCI, were directed to MACI.

{¶2} 2) Plaintiff has alleged his property was left unsecured in an open cell at LeCI for a five week period beginning May 11, 2001. Plaintiff has further alleged several of his

property items were either lost or stolen from the time he entered the infirmary at LeCI to the time his personal property was transferred to MACI. Plaintiff indicated his radio/cassette player, radio, fan, two necklaces, two crosses, set of headphones, pair of gym shoes, two sweatshirts, and two pairs of gym shorts were lost or stolen while stored at LeCI. Plaintiff filed this complaint seeking to recover \$596.77, the estimated replacement value of his alleged missing property.

{¶3} 3) Defendant asserted plaintiff has failed to produce any evidence to support this claim. Defendant maintained all disputed property has been accounted or recovered. Defendant contended plaintiff did not offer sufficient evidence to establish liability for any property loss.

{¶4} 4) Plaintiff has submitted evidence to indicate he previously possessed most of the articles represented in his claim. Plaintiff has not submitted evidence to establish his property was lost or stolen while under defendant's care during May and June of 2001.

#### CONCLUSIONS OF LAW

{¶5} 1) 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.

{¶6} 2) 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.

{¶7} 3) 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.

{¶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 failed to prove, by a preponderance of the evidence, his property was stolen or lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶11} IT IS ORDERED THAT:

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

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

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DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
8/6  
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