

IN THE COURT OF CLAIMS OF OHIO

WILLIAM MCCLAIN, #258-164 :
P.O. Box 45699 :
Lucasville, Ohio 45699-0001 : Case No. 2002-01721-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPT. OF REHABILITATION :
AND CORRECTIONS :

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 December 11, 2001, plaintiff, William McClain, an inmate incarcerated at the Southern Ohio Correctional Facility (SOCF), was transferred from the facility's general population to a disciplinary confinement unit.

{¶2} 2) Incident to his transfer, plaintiff's personal property was inventoried, packed, and stored in the SOCF property vault.

{¶3} 3) Plaintiff has alleged not all his property was packed. Plaintiff has asserted that when he regained possession of his property he discovered several items were missing and had probably not been packed on December 11, 2001.

{¶4} 4) Plaintiff indicated his property loss included seven cassette tapes, two towels, four packs of cigarettes, three bags of chips, three packages of tuna, three bags of coffee, and fifteen photographs. Plaintiff filed this complaint seeking to recover \$276.57 for property loss, plus \$25.00 for filing fee reimbursement.

{¶5} 5) Defendant asserted all of plaintiff's property was packed and returned. Defendant contended plaintiff has failed to prove any of his property was lost or stolen while under the control of SOCF personnel.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 3) 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.

{¶9} 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.

{¶10} 5) 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.

{¶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) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
8/15
Filed 9/10/02
Jr. Vol. 718, Pg. 77
Sent to S.C. reporter 9-23-02