

[Cite as *Davis v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-4985.]

IN THE COURT OF CLAIMS OF OHIO

CHRISTOPHER DAVIS, #392-051 :
P.O. Box 45699
Lucasville, Ohio 45699-0001 : Case No. 2001-11600-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) Plaintiff, Christopher Davis, an inmate, has alleged that on or about October 22, 2001, employees of defendant’s Warren Correctional Institution (WCI) confiscated his two pairs of tennis shoes. The confiscated shoes were allegedly retained by WCI personnel.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$150.00, the estimated value of his two pairs of shoes.

{¶3} 3) Defendant denied plaintiff’s shoes were confiscated by WCI staff members. Evidence has shown plaintiff was transferred from WCI to defendant’s Southern Ohio Correctional Facility (SOCF) on October 23, 2001. When plaintiff transferred to SOCF, he had one pair of tennis shoes. Under defendant’s internal regulations plaintiff is permitted to possess only one pair of tennis shoes.

{¶4} 4) In another matter, plaintiff has contended that when he transferred from WCI to SOCF on October 23, 2001, SOCF personnel confiscated several items of his personal property. Plaintiff asserted the confiscated property was declared contraband and he was forced to sign a form authorizing the destruction of the seized property. Plaintiff related the property was destroyed by SOCF staff members.

{¶5} 5) Plaintiff seeks recovery in the amount of \$135.55 for the destroyed property items which include “art collection rocks,” a bowl, a bottle, a hair brush, a wash cloth, a skull cap, a sweat shirt, three razors, five pens, two pairs of sweat pants, a pair of gym shorts, and a pair of shower shoes.

{¶6} 6) Defendant acknowledged all items claimed by plaintiff were designated as contraband when plaintiff arrived at SOCF. Plaintiff was given the opportunity to either mail the articles out of the institution or authorize SOCF personnel to destroy the items. Plaintiff chose to have the property items destroyed. Defendant denied any liability in this matter. Defendant submitted documentation establishing plaintiff authorized the destruction of certain property items.

{¶7} 7) On July 1, 2002, plaintiff filed a motion to compel service of defendant’s investigation report. Service was perfected on June 19, 2002.

{¶8} 8) On July 1, 2002, plaintiff filed a document captioned “Motion For Entry Of Default And Motion To Compel Defendants To File Investigation Report.” Defendant filed the investigation report on July 29, 2002.

CONCLUSIONS OF LAW

{¶9} 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 property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶10} 2) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶11} 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.

{¶12} 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.

{¶13} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss which was the proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶14} 6) By authorizing the destruction of his property declared contraband and failing to take any subsequent positive action to negate this authorization, plaintiff, in effect, relinquished any property right he maintained in the contraband articles. *Johnson v. Southern Ohio Correctional Facility* (2000), 2000-07846-AD jud.

{¶15} 7) By refusing to authorize the mailing of the contraband items, plaintiff, in effect, abandoned the confiscated contraband and voluntarily relinquished any right of ownership. *Hutton v. Mansfield Correctional Inst.* (2001), 2001-04727-AD.

{¶16} 8) Plaintiff has no right to assert a claim for property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

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

{¶18} IT IS ORDERED THAT:

{¶19} 1) All pending motions by plaintiff are DENIED;

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

{¶21} 3) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
8/28
Filed 9-12-02
Jr. Vol. 718, Pg. 203
Sent to S.C. reporter 9-23-02