

IN THE COURT OF CLAIMS OF OHIO

BRIAN GRUBB, #372-587 :
P.O. Box 45699 :
Lucasville, Ohio 45699 : Case No. 2002-03007-AD

Plaintiff : MEMORANDUM DECISION

v. :

ROSS 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 or about May 23, 2001, plaintiff, Brian Grubb, an inmate incarcerated at defendant, Ross Correctional Institution, was transferred from the institution's general population to a disciplinary confinement unit.

{¶2} 2) Plaintiff's personal property was inventoried, packed, and stored in defendant's property vault incident to the transfer.

{¶3} 3) Plaintiff has alleged his personal property was either lost or stolen while stored in defendant's vault. Plaintiff asserted the following articles are missing: four towels, eight t-shirts, seven pairs of socks, one pair of boots, one pair of shoes, three tank tops, seven pairs of boxer shorts, two pairs of sweat

pants, one pair of shorts, forty-one photographs, one photo album, and assorted commissary items. Plaintiff has claimed losses in the amount of \$450.00. Plaintiff filed this complaint alleging his property was lost or stolen as a result of negligence on the part of defendant's personnel.

{¶4} 4) Defendant denied any of plaintiff's property was lost or stolen while under control. Defendant submitted a copy of plaintiff's property inventory dated May 31, 2001. Plaintiff signed the document acknowledging it as a complete listing of his personal property. The inventory indicates the following property items relevant to this claim were packed: assorted photographs, one pair of gym shorts, and four towels. Defendant contended these items were returned to plaintiff.

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, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶6} 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.

{¶7} 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.

{¶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, 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.

{¶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) The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
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