

[Cite as *Garth v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-5268.]

IN THE COURT OF CLAIMS OF OHIO

TERRANCE GARTH, #282-934 :  
P.O. Box 45699 :  
Lucasville, Ohio 45699-0001 : Case No. 2002-03589-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 October 18, 2000, employees of defendant's Richland Correctional Institution, confiscated two gold rings, one gold necklace and a Casio watch from the possession of plaintiff, Terrance Garth, an inmate.

{¶2} 2) The rings, watch and necklace were subsequently lost while under the care of defendant's personnel.

{¶3} 3) Plaintiff consequently filed this complaint seeking to recover \$450.00, the estimated value of the missing articles, plus filing fees.

{¶4} 4) On June 10, 2002, defendant filed an investigation report. Defendant's investigation revealed plaintiff failed to

produce any titles or other indicia of ownership in regard to the lost property. Evidence has shown plaintiff legitimately owned a gold necklace which was not lost. A second gold necklace was lost.

Plaintiff was entitled to rightfully own only one necklace. On August 5, 2002, plaintiff filed a response to the investigation report. However, plaintiff never provided evidence that he possessed titles to the allegedly lost items.

#### CONCLUSIONS OF LAW

{¶5} 1) 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.

{¶6} 2) Plaintiff has no right to assert a claim for property in which he cannot prove he maintained ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶7} 3) In the instant claim, plaintiff has failed to show he sustained any loss as a result of any negligence on the part of defendant. Plaintiff has no legal right to possess the items obtained in violation of policy and plaintiff has failed to show he obtained the remaining items in a legal manner or had a legal right to possess those items. Consequently, plaintiff's claim is denied.

*Roberts v. Richland Correctional Institution* (2002), 2002-03031-AD.

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

{¶9} IT IS ORDERED THAT:

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

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

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DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
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