

IN THE COURT OF CLAIMS OF OHIO

LAWANDA HESTER, #38971	:	
2675 East 30th Street	:	
Cleveland, Ohio 44115	:	Case No. 2002-05298-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
NORTHEAST PRE-RELEASE CENTER	:	
Defendant	:	

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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} Plaintiff, LaWanda Hester, an inmate incarcerated at defendant's Northeast Pre-Release Center, stated she was watching television in her room at approximately 10:00 a.m., on March 9, 2002, when an electric power outage occurred. Within seconds the power was restored and plaintiff checked her television set to determine if it was functional. Plaintiff indicated that the television set did not carry any sound despite the volume setting being turned to the highest level. Plaintiff explained the television set's volume sensor had blown. Plaintiff attributed the volume sensor damage to an electrical power surge accompanying the momentary power failure at defendant's institution. Consequently, plaintiff filed this complaint seeking to recover \$150.79, the

replacement cost of a new television set, plus \$25.00 for filing fee reimbursement. Plaintiff contended defendant is liable for the property damage to her television set based on the assertion defendant has some duty to protect her electrically operated appliance from damaged caused by power outages.

{¶2} Defendant denied any liability in this matter. Defendant acknowledged a power outage occurred on March 9, 2002 at the Northeast Pre-Release Center. The power outage was beyond defendant's control. Defendant argued plaintiff has failed to prove her television set was damaged as a result of any negligence on defendant's part. Defendant has also argued plaintiff has failed to offer sufficient evidence to show her set was damaged by a power surge or that her appliance would have been spared any damage by having a surge protector available.

CONCLUSIONS OF LAW

{¶3} "1) Plaintiff has the burden of proving her property damage was caused by a power surge and the electrical malfunction was attributable to negligent acts or omissions on the part of defendant. *Pryor v. Southern Ohio Correctional Facility* (1997), 97-03026-AD.

{¶4} 2) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining her claim. If her evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, she fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶5} 3) 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} 4) Plaintiff has failed to prove a causal connection between the damage to her television set and any breach of a duty

owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Institution* (1998), 97-11819-AD.

{¶7} 5) 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.

{¶8} 6) Plaintiff has failed to prove, by a preponderance of the evidence, her property was damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶10} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk