

IN THE COURT OF CLAIMS OF OHIO

DALE G. BECKER, #249-474	:	
16149 State Route 104	:	
P.O. Box 7010	:	Case No. 2002-03091-AD
Chillicothe, Ohio 45601	:	
	:	
Plaintiff	:	MEMORANDUM DECISION
	:	
v.	:	
	:	
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
	:	
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 July 24, 2001, employees of defendant, Department of Rehabilitation and Correction, conducted a shakedown search of inmate's living quarters at the Ross Correctional Institution.

{¶2} 2) Plaintiff, Dale G. Becker, an inmate, has alleged several items of his personal property were confiscated and thrown away by defendant's staff during the course of the shakedown search. Plaintiff indicated his four locks, three typewriter ribbons, a pair of scissors, and a bottle of glue were discarded by defendant's personnel.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$57.75, the estimated value of his property. Plaintiff submitted

evidence showing he possessed scissors, typewriter ribbons, glue, and locks on April 11, 2001.

{¶4} 4) Defendant denied any of plaintiff's property was lost as a proximate cause of any negligence on the part of defendant's employees. Defendant has contended plaintiff has failed to prove he suffered any property loss during the July 24, 2001 shakedown search. Defendant suggested plaintiff has not proven he rightfully owned locks, glue, and scissors. Defendant has not produced any evidence to bring plaintiff's ownership of property into issue. Defendant acknowledged plaintiff possessed three typewriter ribbons, four locks, a bottle of glue, and a pair of scissors when he was transferred to the Ross Correctional Institution from the Chillicothe Correctional Institution on June 29, 2001. Defendant has no record of confiscating any property from plaintiff on July 24, 2001. Plaintiff did not receive a conduct report for possession of contraband in connection with the July 24, 2001 shakedown search.

{¶5} 5) On September 20, 2002, plaintiff filed a response to defendant's investigation report. Plaintiff insisted he rightfully possessed typewriter ribbons, scissors, glue, and locks which were thrown away by defendant's staff on July 24, 2001. Plaintiff asserted he should recover all damages claimed. Plaintiff has not produced sufficient evidence to establish any of his property was confiscated and destroyed during a shakedown search on July 24, 2001.

CONCLUSIONS OF LAW

{¶6} "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.

{¶7} 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.

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

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

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

{¶13} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

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