

IN THE COURT OF CLAIMS OF OHIO

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|-------------------------------|---|------------------------|
| ROY TERRELL, #416-724 | : | |
| P.O. Box 8107 | : | |
| Mansfield, Ohio 44901 | : | Case No. 2002-03163-AD |
| Plaintiff | : | MEMORANDUM DECISION |
| v. | : | |
| CORRECTIONAL RECEPTION CENTER | : | |
| 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, Roy Terrell, an inmate incarcerated at defendant, Corrections Reception Center (CRC), has alleged that on November 7, 2001 he was transferred to the Corrections Medical Center (CMC).

{¶2} 2) Plaintiff has further alleged his personal property was inventoried, packed and delivered into defendant's custody incident to this transfer to CMC.

{¶3} 3) Plaintiff has asserted he subsequently returned to CRC and discovered several items of his personal property were missing. Plaintiff maintained his shoes, envelopes, photographs, letters, legal papers, Bible, cigarettes, lighter, underwear, t-shirts, socks and other articles were lost while under defendant's

control.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$200.00, the estimated replacement value of his alleged missing property. On June 10, 2002, plaintiff submitted the filing fee.

{¶5} 5) Defendant acknowledged plaintiff was incarcerated at CRC on November 7, 2001. However, defendant denied plaintiff was transferred to CMC at any time during November 2001. Furthermore, defendant denied any of plaintiff's property was lost while under its control. Evidence has shown plaintiff possessed all items claimed on November 7, 2001. Plaintiff was required to mail some property from CRC and was permitted to retain other items. No evidence was submitted to establish any of plaintiff's property was lost while under the custody of defendant's staff.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶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 lost as a proximate 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

RDK/laa
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