

[Cite as *Brooks v. Ohio State Penitentiary*, 2002-Ohio-6947.]

IN THE COURT OF CLAIMS OF OHIO

STEPHEN B. BROOKS, #207-171 :
P.O. Box 8000 :
Conneaut, Ohio 44030 : Case No. 2002-04372-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO STATE PENITENTARY [sic] :

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 November 29, 2001, plaintiff, Stephen B. Brooks, an inmate incarcerated at defendant, Ohio State Penitentiary, was transferred to a segregation unit. Plaintiff's personal property was packed and delivered to defendant's personnel incident to his transfer.

{¶2} 2) On or about January 15, 2002, plaintiff and his personal property were transferred from defendant's facility to the Lake Erie Correctional Institution (LaECI). Plaintiff asserted that when he arrived at LaECI he discovered numerous items of his personal property were missing. Plaintiff indicated his missing property included a pair of gym shoes, a watch, a wedding ring, a set of headphones and eight cassette tapes.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$360.00, the estimated value of his alleged missing property items.

{¶4} 4) Defendant denied any liability in this matter. Defendant contended plaintiff has failed to prove delivery of the alleged missing property items to defendant's staff. Defendant asserted plaintiff has failed to establish he suffered a loss of property as a result of any act or omission on the part of defendant's employees.

{¶5} 5) Plaintiff filed a motion for extension of time to respond to defendant's investigation report. Plaintiff filed this motion on September 5, 2002.

{¶6} 6) On October 25, 2001, plaintiff filed a response to defendant's investigation report. Plaintiff asserts his property was lost by defendant's agents during his transfer. Plaintiff submits documents to support his argument. However, a review of the Inmate Property Record-Disposition and Receipt entitled Exhibit 2 appears to have been altered to reflect the date of January 18, 2002. Also, copies of the Inmate Property Record-Disposition and Receipt were both signed by plaintiff and certify that the above listed property was a complete and accurate inventory of his personal property. Accordingly, plaintiff's argument lacks credibility.

CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 4) 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} 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.

{¶12} 6) Plaintiff's failure to prove delivery of his alleged lost property items to defendant constitutes a failure to show a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶13} 7) Plaintiff has failed to prove his property items were lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's September 5, 2002 motion is MOOT;

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

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

DANIEL R. BORCHERT
Deputy Clerk

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