

[Cite as *Stevens v. Ross Correctional Inst.*, 2002-Ohio-6949.]

IN THE COURT OF CLAIMS OF OHIO

JEFFREY STEVENS, #339-120 :  
P.O. Box 7010 :  
Chillicothe, Ohio 45601 : Case No. 2002-06430-AD  
  
Plaintiff : MEMORANDUM DECISION  
  
v. :  
  
ROSS CORRECTIONAL INST. :  
  
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} Plaintiff, Jeffrey Stevens, an inmate incarcerated at defendant, Ross Correctional Institution, has asserted that on January 28, 2002, he ordered a Walkman radio and set of headphones from a company identified as Walkenhorst. Plaintiff explained Walkenhorst shipped him a typewriter and a set of headphones which he did not order. Plaintiff also related Walkenhorst then, without any authorization, sent him a television set. Plaintiff indicated he shipped back all the items he did not order and requested Walkenhorst fill his original order of a Walkman and a set of headphones. Plaintiff asserted Walkenhorst did not comply with his order request and did not send him a refund for the price of the Walkman and headphones. Plaintiff filed this complaint seeking to

recover \$41.96, the purchase price of the items ordered and not shipped. Plaintiff has maintained defendant is responsible for Walkenhorst's failure to ship articles or remit a refund.

{¶2} Defendant stated Walkenhorst sent a refund check in the amount of \$14.97, representing the purchase price of a Walkman. Defendant asserted the amount of the refund check was deposited into plaintiff's inmate account. Defendant related the headphones Walkenhorst sent were never returned. Consequently, no refund check was issued for the headphones. Defendant denied breaching any duty owed to plaintiff which resulted in any financial loss.

{¶3} On October 30, 2002, plaintiff filed a response to defendant's investigation report. Plaintiff denied he ever received the set of headphones that were shipped by Walkenhorst to defendant's institution. Plaintiff has suggested the headphones were either lost while under the control of defendant's personnel or mistakenly forwarded to another unidentified inmate. Plaintiff requested the court order defendant to pay damages in the amount of \$27.00, the purchase price of the headphones.

#### CONCLUSIONS OF LAW

{¶4} 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;

{¶5} 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.

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 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.

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

{¶11} IT IS ORDERED THAT:

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

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

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DANIEL R. BORCHERT  
Deputy Clerk