

IN THE COURT OF CLAIMS OF OHIO

FREDERICK E. JOHNSON, #162-761 :
P.O. Box 45699 :
Lucasville, Ohio 45699-0001 : Case No. 2002-01080-AD

Plaintiff : MEMORANDUM DECISION

v. :

SOUTHERN OHIO CORRECTIONAL :
FACILITY :

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 October 8, 2001, plaintiff, Frederick E. Johnson, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (SOCF), was transferred from the J-3-65 housing unit to the K-1-6 housing unit.

{¶2} 2) Incident to his transfer, plaintiff's personal property was inventoried, packed and delivered into defendant's custody.

{¶3} 3) When plaintiff subsequently regained possession of his property, he complained several items were not returned. Plaintiff indicated the following articles were not returned: a dictionary, 10 legal pads, 20 envelopes, 3 bags of coffee, 5 cans

of snuff, 6 greeting cards, 8 typing tablets, 2 cocoa butter sticks, 2 self-help litigation books and 30 photographs.

{¶4} 4) Consequently, plaintiff filed this complaint seeking to recover \$171.45 for property loss, plus \$25.00 for filing fee reimbursement.

{¶5} 5) Defendant asserted all of plaintiff's packed property was subsequently returned to plaintiff's possession. Plaintiff's property inventory of October 8, 2001 lists the following items relevant to this claim: 30 photographs, 3 books and 10 legal pads. There is no record defendant exercised control over any envelopes, coffee, typing tablets, cocoa butter sticks, tobacco products or greeting cards. Plaintiff's signature appears on the October 8, 2001 property inventory.

{¶6} 6) Plaintiff filed a response insisting all property items claimed were lost while under defendant's custody.

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) 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.

{¶11} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a 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) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
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