

[Cite as *Frezzell v. Toledo Correctional Inst.*, 2002-Ohio-7236.]

IN THE COURT OF CLAIMS OF OHIO

HIAWATHA FREZZELL, #138-196 :  
P.O. Box 3300 :  
ASPC-Lewis : Case No. 2002-05603-AD  
Buckeye, Arizona 85326 :

Plaintiff : MEMORANDUM DECISION

v.

TOLEDO CORRECTIONAL :  
INSTITUTION :

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} On April 17, 2002, plaintiff, Hiawatha Frezzell, an inmate, was transferred from defendant, Toledo Correctional Institution (TOCI) to the Warren Correctional Institution. Plaintiff has alleged, at sometime during the transfer process, he was informed by defendant's personnel that all of his new property recently purchased by his family members was missing and presumed lost.

{¶2} Plaintiff consequently filed this complaint seeking to recover \$309.99, the total estimated value of all property items he claimed were lost while under defendant's control. Specifically, plaintiff asserted his sweat shirt, gym shoes, a pair of pants and a gold chain with attached cross were lost by defendant. Plaintiff

submitted a receipt for the purchase of a sweat shirt and pair of gym shoes. Total cost of the items amounted to \$100.68. Additionally, plaintiff offered a copy of his property inventory apparently compiled on April 1, 2002. This inventory seemingly indicates defendant's staff at TOCI packed a "necklace." Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant admitted confiscating and subsequently losing a pair of gym shoes and a sweat shirt delivered to TOCI by plaintiff's family members and intended for plaintiff. Defendant admitted liability in the amount of \$100.68 for the loss of the gym shoes and sweat shirt. Defendant denied confiscating a gold chain and cross and a pair of pants. Defendant denied liability for the loss of these articles.

{¶4} On October 7, 2002, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his pants and chain with attached cross were lost while under defendant's control. Plaintiff has not established proper indicia of ownership of a cross and chain. Plaintiff has not presented sufficient proof to indicate his pants or jewelry were lost by defendant.

#### CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

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{¶7} 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.

{¶8} Negligence has been shown in respect to the loss of plaintiff's shoes and sweat shirt. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶9} Plaintiff has no right to assert a claim for property in which he cannot prove he maintained ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD; *Johnson v. Southern Ohio Correctional Facility* (2000), 2000-07846-AD. Plaintiff has failed to produce evidence showing he legitimately owned a gold chain with a cross. Plaintiff's claim for the loss of jewelry is denied.

{¶10} 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} Plaintiff has failed to prove, by a preponderance of the evidence, he sustained the loss of jewelry and a pair of pants as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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{¶12} Defendant is liable to plaintiff in the amount of \$100.68, plus the \$25.00 filing fee which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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DANIEL R. BORCHERT  
Deputy Clerk

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ASPC-Lewis	:	Case No. 2002-05603-AD
Buckeye, Arizona 85326	:	
	:	
Plaintiff	:	ORDER OF ADMINISTRATIVE
	:	DETERMINATION
v.	:	
	:	
TOLEDO CORRECTIONAL	:	
INSTITUTION	:	
	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel  
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 Columbus, Ohio 43229

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Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

IT IS ORDERED THAT:

- 1) Plaintiff's claim is GRANTED in part and DENIED in part;
- 2) Defendant (Toledo Correctional Institution) pay plaintiff (Hiawatha Frezzell) \$125.68 and such interest as is allowed by law;
- 3) Court costs are assessed against defendant.

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DANIEL R. BORCHERT  
 Deputy Clerk

