

IN THE COURT OF CLAIMS OF OHIO

DARYL D. DORSEY, JR., #312-309 :
2500 South Avon-Belden Road
Grafton, Ohio 44044 : Case No. 2002-07304-AD

Plaintiff : MEMORANDUM DECISION

v. :

GRAFTON 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} 1) Plaintiff, Daryl D. Dorsey, Jr., an inmate incarcerated at defendant, Grafton Correctional Institution (GCI), has alleged that on May 16, 2002, his shoes were thrown away by a member of defendant's staff. Plaintiff explained his shoes were stored outside his cell and were discarded during the course of a shakedown search.

{¶2} 2) Plaintiff has asserted defendant's personnel lacked any proper authority to discard his shoes. Consequently, plaintiff filed this complaint seeking to recover \$100.00, the value of his shoes, plus \$25.00 for filing fee reimbursement.

{¶3} 3) Defendant acknowledged several items of personal property left on the cell range were collected by GCI staff

incident to the May 16, 2002 shakedown. Defendant considered the property items left on the cell range as abandoned. Therefore, defendant has denied liability for any damages attributable to the loss of shoes left on the cell range.

{¶4} 4) Plaintiff filed a response claiming he did not intend to abandon property when he left his shoes on the cell range outside his cell.

CONCLUSIONS OF LAW

{¶5} 1) 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 property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶6} 2) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶7} 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.

{¶8} 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.

{¶9} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss which was the proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶10} 6) Plaintiff effectively abandoned his property by placing the shoes on the institution cell range floor immediately

prior to a shakedown search. Plaintiff's acts constituted an intention to abandon property and a manifestation of an intention to abandon property. Plaintiff has no right to assert a claim for property in which he cannot prove he maintained an ownership right.

DeLong v. Department of Rehabilitation and Correction (1988), 88-06000-AD.

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

{¶12} IT IS ORDERED THAT:

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

{¶14} 2) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk