

[Cite as *Robinson v. S. Ohio Correctional Facility*, 2003-Ohio-1323.]

IN THE COURT OF CLAIMS OF OHIO

FRANK ROBINSON, #244-543	:	
3200 N. West Street	:	
Lima, Ohio 45801	:	Case No. 2002-01209-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) Plaintiff, Frank Robinson, an inmate incarcerated at the Southern Ohio Correctional Facility (SOCF), has alleged that during the months of September and October 2000, he was assigned to a Local Control unit.

{¶2} 2) Plaintiff further alleged his personal property was packed and delivered into the custody of SOCF personnel incident to his assignment in Local Control. Plaintiff asserted his personal property was lost while under the control of SOCF staff.

{¶3} 3) Plaintiff indicated the following items were lost under defendant's care: a television set, a radio, two pairs of gym shoes, a belt, four pairs of sweat pants, a sweat shirt, three pairs of undershorts, three pairs of socks, six t-shirts, ten

cassette tapes, an electric razor, three-hundred photographs, and assorted commissary articles. Plaintiff filed this complaint seeking to recover \$2,066.99, the estimated value of his alleged missing property. On March 4, 2002, plaintiff submitted the filing fee.

{¶4} 4) Defendant denied losing any of plaintiff's property during the time period plaintiff noted in his complaint. Defendant could not produce any records to show the property claimed by plaintiff came under the custody of SOCF staff during September and October 2000. Additionally, defendant has disputed plaintiff's damage claim.

{¶5} 5) Plaintiff has not produced any evidence to establish he possessed the property items claimed. Plaintiff has not submitted any evidence to show any of his personal property was lost while in the care of SOCF employees.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 5) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable 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} 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.

{¶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) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk