

IN THE COURT OF CLAIMS OF OHIO

WILLIAM A. MILLER, #364-929	:	
1580 State Route #56	:	
P.O. Box 69	:	Case No. 2002-09692-AD
London, Ohio 43140-0069	:	
	:	
Plaintiff	:	MEMORANDUM DECISION
	:	
v.	:	
	:	
LONDON OHIO CORRECTIONAL	:	
INSTITUTION	:	
	:	
Defendant	:	

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For Defendant: Gregory C. Trout, Chief Counsel
 Department of Rehabilitation and
 Correction
 1050 Freeway North
 Columbus, Ohio 43229

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{¶1} On February 28, 2002, plaintiff, William A. Miller, an inmate incarcerated at defendant, London Correctional Institution (LOCI), was transferred from the institution's general population to a segregation unit. According to plaintiff, his personal property was packed, inventoried, and transported to a storage area by three inmates identified as Helton, Desonie, and Gordon. Plaintiff indicated all his property was contained in three boxes with all his legal material and papers stored in one of the three boxes. Plaintiff asserted defendant's personnel refused to store the box containing his legal materials and documents. Consequently, plaintiff explained inmate Helton took the box of legal material and stored it under his bunk in his housing unit.

{¶2} On March 15, 2002, defendant's staff conducted a shakedown search at LOCI and discovered one large box and one plastic bag containing plaintiff's property in the possession of inmate Helton. The property was confiscated and inmate Helton was issued a conduct report. The confiscated property was classified as contraband property scheduled to be destroyed.

{¶3} On March 20, 2002, plaintiff was released from segregation and his property which had been stored under defendant's custody was returned. Among the returned property items that were contained in two boxes and one bag was an entire box of legal material plus assorted additional legal work. Plaintiff signed his property inventory list acknowledging all the property listed on the inventory was returned to his possession.

{¶4} At sometime after being released from segregation, plaintiff learned the property confiscated from inmate Helton was scheduled for destruction. Plaintiff indicated he contacted defendant's Institutional Inspector, Karrie Sebastian, on March 21, 2002, regarding the contraband property seized from inmate Helton's possession. Plaintiff suggested he told Sebastian he owned the seized property and he wanted the items returned to him. Inspector Sebastian contacted defendant's Vault Supervisor, Lt. Jones, requesting he examine the seized contraband and return any legal documents that could be verified as plaintiff's property. According to Sebastian, defendant's Vault/Mail Supervisor Lt. Miller had all items confiscated from inmate Helton destroyed before the articles could be examined to determine if any belonged to plaintiff. Defendant's employee, Lt. Miller, admitted supervising the destruction of seized contraband property. However, Lt. Miller stated he did recall making a cursory examination of the contraband and did not observe any items appearing to be legal documents. Plaintiff stated while looking through a window on March 25, 2002, he saw Lt. Jones escorting an inmate pushing a cart stacked with boxes. Plaintiff contended he

could identify his legal materials among the boxes stacked on the cart. Plaintiff maintained he approached the inmate pushing the cart, asked him where he was taking the cart, and was told he "was going to the compactor." Plaintiff related he was ordered to leave the area before he could talk with Lt. Jones about the return of his legal materials. Plaintiff further related he did later speak with Lt. Jones who told him Lt. Miller had authorized the destruction of confiscated property after determining, "it was a big bunch of trash."

{¶5} Plaintiff argued his legal documents were destroyed by defendant without proper authorization. Furthermore, plaintiff asserted defendant refused to accept delivery of his legal material, thereby resulting in inmate Helton storing the material under his bunk and exposing the material to confiscation. Therefore, plaintiff has contended defendant is responsible for the loss of all his legal documents that were destroyed. Plaintiff filed this complaint seeking to recover \$634.24, the replacement cost of documents plaintiff has claimed were destroyed by defendant.

{¶6} Defendant denied any liability in this matter. Defendant acknowledged LOCI personnel found a box under the bed of inmate Helton containing paperwork with plaintiff's name on it. Defendant suggested this box was placed under inmate Helton's bed by plaintiff. Defendant denied refusing to accept delivery of any property items belonging to plaintiff incident to his February 28, 2002 transfer to segregation. The box stored under inmate Helton's bunk constituted a violation of defendant's internal regulations and was consequently confiscated as contraband. Defendant asserted that if the box stored under Helton's bunk did contain plaintiff's legal documents, the storage method violated defendant's internal regulations. Defendant has contended plaintiff has failed to offer sufficient evidence to prove any of his legal material was destroyed by LOCI staff. Additionally, defendant has asserted

plaintiff has failed to provide adequate proof of damages. Defendant argued plaintiff's claim be denied.

{¶7} Plaintiff filed a response insisting his legal material was knowingly destroyed by defendant. Plaintiff alleged defendant's personnel knew the property confiscated from inmate Helton belonged to plaintiff and represented legal material. Plaintiff asserted the confiscated legal material was destroyed without proper authorization and therefore he is entitled to all damages claimed.

{¶8} Defendant filed a reply to plaintiff's response. Defendant acknowledges that it negligently destroyed a box belonging to plaintiff. However, plaintiff has failed to prove the box contained legal material as plaintiff contended. Defendant asserts the box contained miscellaneous papers of no value. Defendant agrees it was erroneous in stating inmate Helton agreed to the destruction of property, however, plaintiff's own action of signing he had received all of this property has more weight.

{¶9} 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. When defendant

{¶10} engaged in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶11} However, 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.

{¶12} 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. In

the instant claim, defendant did destroy, without any proper authorization, the material confiscated from inmate Helton's possession. Plaintiff has failed to produce sufficient evidence to indicate the confiscated material belonged to him. Furthermore, plaintiff has not offered enough evidence to show the seized materials were his legal documents of the nature and amount professed.

{¶13} 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; *Johnson v. Southern Ohio Correctional Facility* (2000), 2000-07846-AD. Any property which belonged to plaintiff and was stored under Helton's bunk became abandoned property, whereby plaintiff relinquished all rights of ownership. Therefore, plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶15} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk