

[Cite as *Mayo v. Ross Correctional Inst.*, 2003-Ohio-2266.]

IN THE COURT OF CLAIMS OF OHIO

ANTHONY MAYO :  
Plaintiff :  
v. : CASE NO. 2002-09145-AD  
ROSS CORRECTIONAL INSTITUTION : ENTRY OF DISMISSAL  
Defendant :

.....

{¶1} THE COURT FINDS THAT:

{¶2} 1) On October 21, 2002, plaintiff, Anthony Mayo, filed a complaint against defendant, Ross Correctional Institution. Plaintiff alleges on or about May 3, 2002, \$200 worth of commissary items were confiscated from him, declared contraband, and never returned. Plaintiff seeks damages for the loss of these items. Plaintiff submitted the filing fee with the complaint;

{¶3} 2) On December 24, 2002, defendant filed a motion to dismiss, pursuant to Civil Rule 12(B)(1) and (B)(6), lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted;

{¶4} 3) In support of the motion to dismiss, defendant stated in pertinent part:

{¶5} "Defendant has tangible evidence which includes a contraband log, cash slip, and package delivery logs (Exhibits B, C, and D). The contraband log indicates that on May 3, 2002, certain described contraband including pop, cookies, chips, and honey buns was taken from plaintiff (Exhibit A). That log additionally indicates the disposition of contraband, "ret[urn] to I/M [inmate] to mail home" (Exhibit A). The cash slip indicates that on June 2, 2002, plaintiff authorized by his signature the withdrawal of postage cost to

send the contraband to a designated residential address (Exhibit B). The package delivery log indicates that defendant's agent delivered a package containing plaintiff's contraband to the United States Postal Service for delivery to that same address (Exhibit C, 2 p.p.). In sum, these Exhibits prove that plaintiff's confiscated contraband property was constructively returned to him.

{¶6} "Not only has the plaintiff failed to allege and provide any evidence that his loss was the proximate result of any negligence on the part of defendant's agents, the defendant's Exhibits establish that this defendant exercised it's duty of care owed toward the contraband property. This defendant is not responsible for property once it is shipped out of the facility. At that point it becomes the responsibility of the United States Postal Service, *Knee v. DRC* [sic], 86-08617-AD, Court of Claims, unreported case.";

{¶7} 4) On January 24, 2003, plaintiff filed a motion in opposition to defendant's motion to dismiss;

{¶8} 5) In support of the motion in opposition, plaintiff stated in pertinent part:

{¶9} "The Defendant, Department of Rehabilitation and Correction and their Agent Ross Correctional Institution have collaborated to create a conspiracy which includes false documents and statements to this Court . . .

{¶10} "[T]his Court should note that these records are not the original and these copies have been altered. Only the sections concerning my property and the disposition has been "whited out" then rewrote. This Court should not accept these altered copies and request the original. And at the least give no credibility these altered documents. . . This case slip is the defendant's evidence that I allegedly sent home my property. The problem is that the claimed \$4.00 that I was supposed to pay does not support the actual cost to send all the items home as the defendant claims. If this Court would review all those items that included several cans of pop, (38 cans pop) and 64 separate packages of food items, and any moderate estimate of the weight and cost for shipping of these items will be well over the claimed 4.00 cost that the defendant is attempting to claim.";

{¶11} 6) A review of the documentation submitted by defendant does not reveal it has been altered or "whited out." Defendant used a highlighting pen to indicate the property that belonged to plaintiff rather than other inmates;

{¶12} 7) Plaintiff offered no evidence, other than his own statement, to prove the amount of money for postage removed from his account did not reflect the cost for mailing out his property.

{¶13} THE COURT CONCLUDES THAT:

{¶14} 1) This court is without jurisdiction to consider an appeal from a Rules Infraction Board decision. *Freeman v. Denton* (1976), 76-0463; *Maynard v. Jago* (1977), 76-0581;

{¶15} 2) Defendant is not responsible for an item once it is shipped out of the facility. At that point it becomes the responsibility of the U.S. Postal Service to implement its own procedures for tracing lost packages. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Perkins v. Ohio State Reformatory* (1987), 86-10743-AD;

{¶16} 3) In order for plaintiff to recover on his claim he has the burden to show, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. Plaintiff has failed to present any evidence proving defendant was negligent and that plaintiff's loss was caused by defendant's negligence.

{¶17} IT IS ORDERED THAT:

{¶18} 1) Defendant's motion to dismiss is GRANTED;

{¶19} 2) Plaintiff's case is DISMISSED;

{¶20} 3) Court costs are assessed against plaintiff.

---

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Anthony Mayo, #384-228  
P.O. Box 7010  
Chillicothe, Ohio 45601

Plaintiff, Pro se

Stephen A. Young,  
Staff Counsel  
Department of Rehabilitation  
and Correction  
1050 Freeway Drive North  
Columbus, Ohio 43223

For Defendant

DRB/laa  
4/18  
Filed April 29, 2003  
Sent to S.C. Reporter 5/6/03