



value of the alleged missing property.

{¶4} 4) Defendant denied any liability in this matter. Defendant denied any of plaintiff's property was lost while stored under the custody of PCI staff. Defendant asserted all of plaintiff's property which was packed on February 16, 2002 was subsequently returned. Defendant asserted plaintiff has failed to produce evidence establishing his property was lost while under the control of PCI personnel.

#### CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶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, his property was stolen or lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶11} IT IS ORDERED THAT:

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

{¶13} 2) The court shall absorb the court costs of this case in excess of the

filing fee.

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DANIEL R. BORCHERT  
Deputy Clerk

Order cc:

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