

[Cite as *Vega v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2434.]

IN THE COURT OF CLAIMS OF OHIO

RAFAEL B. VEGA	:	
Plaintiff	:	
v.	:	CASE NO. 2002-09374-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On or about January 25, 2002, plaintiff, Rafael B. Vega, an inmate, was transferred from defendant's Mansfield Correctional Institution (ManCI) to defendant's Southern Ohio Correctional Facility (SOCF). Plaintiff stated his personal property, contained in two boxes, accompanied him on his transfer to SOCF.

{¶2} 2) Plaintiff related, upon his arrival at SOCF he observed defendant's personnel throw a box containing his television set onto a concrete floor. Plaintiff asserted this act caused severe damage to his television set.

{¶3} 3) After entering SOCF, plaintiff was assigned to a segregation unit and separated from his personal property. Plaintiff maintained he was presented an inventory of his personal property on January 28, 2002, and discovered multiple articles were not listed. Plaintiff also maintained his television set was marked as damaged on the inventory.

{¶4} 4) Plaintiff has alleged the following items were lost or stolen while under the custody of SOCF staff: a gold link chain, a gold wedding ring, a gold nugget ring, a wristwatch, a leather belt, a set of headphones, and a radio. Plaintiff filed this complaint seeking to recover \$914.00 for property loss, plus \$250.00, the estimated replacement

value of his damaged television set. Plaintiff submitted the filing fee with the complaint.

{¶5} 5) Plaintiff submitted a copy of his property inventory compiled at ManCI on September 20, 2001. This inventory shows items packed included a necklace, one ring, a watch, a belt, and a radio. Headphones and an additional ring were not listed on this inventory. Plaintiff submitted a copy of his property inventory compiled at ManCI on August 14, 2001. This inventory shows articles packed included a belt and radio. Headphones, rings, a necklace, and a watch were not listed on this inventory. Plaintiff submitted a copy of his property inventory compiled at ManCI on March 19, 2001. This inventory shows items packed included a set of headphones, two rings, a radio, a watch, and a belt. A necklace was not listed on this inventory. Plaintiff offered copies of titles issued which establish plaintiff was given titles for the following articles: two rings, a radio, a necklace, a set of headphones, and a watch. Plaintiff submitted a copy of his property inventory compiled at SOCF on January 28, 2002. None of the property plaintiff designated as lost or stolen was listed on this inventory. Plaintiff signed the inventory acknowledging it contained a complete and accurate listing of his personal property.

{¶6} 6) Defendant acknowledged plaintiff's television set was damaged during transport from ManCI to SOCF. Defendant admitted liability in the amount of \$250.00 for the damaged television set. Additionally, defendant admitted liability in the amount of \$10.00 for the loss of plaintiff's belt.

{¶7} 7) However, defendant has denied any liability for the loss of the remaining property items. Defendant acknowledged plaintiff's property was delivered into the custody of ManCI staff on September 20, 2001, when plaintiff was housed in a segregation unit pending transfer. An inventory compiled on September 20, 2001, shows a necklace, one ring, a watch, and a radio were received by ManCI staff. A second property inventory compiled at ManCI on January 25, 2002, made pursuant to plaintiff's transfer to SOCF, does not list a necklace, watch, radio, and ring. Defendant explained plaintiff sent a package of personal property to his home on January 25, 2002. Defendant suggested this mailed package contained property items plaintiff claimed were lost while under defendant's control. An additional inventory compiled at SOCF on January 28, 2002, does not list any of the property with the exception of an altered radio, plaintiff claimed was lost while under defendant's control. Plaintiff signed this inventory acknowledging it as a

complete and accurate listing of his property.

{¶8} 8) Plaintiff filed a response insisting all the items he claimed, were lost while under defendant's control. Plaintiff denied he sent the claimed lost articles to an outside address.

#### CONCLUSIONS OF LAW

{¶9} 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.

{¶10} 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.

{¶11} 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.

{¶12} 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.

{¶13} 5) In respect to the loss of his belt and damage to his television set, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶14} 6) However, plaintiff has failed to prove, by a preponderance of the evidence, the remaining items were lost or stolen as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶15} 7) The court finds defendant liable to plaintiff in the amount of \$260.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶16} Having considered all the evidence in the claim file and adopting the

memorandum decision concurrently herewith;

{¶17} IT IS ORDERED THAT:

{¶18} 1) Plaintiff's claim is GRANTED in part and DENIED in part;

{¶19} 2) Defendant (Department of Rehabilitation and Correction) pay plaintiff (Rafael B. Vega) \$285.00 and such interest as is allowed by law;

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

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
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