

on the argument plaintiff's property was stolen under circumstances where defendant's personnel were without fault or did not fail to exercise due care to protect the property. The court disagrees with defendant's position concerning excuse and lack of liability.

{¶7} 7) Plaintiff submitted a response to defendant's investigation report. Plaintiff asserts defendant is responsible for the loss of his property.

CONCLUSIONS OF LAW

{¶8} 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.

{¶9} 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.

{¶10} 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.

{¶11} 4) Negligence has been shown in respect to the theft and loss of plaintiff's property. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶12} 5) Defendant is liable to plaintiff in the amount of 475.00, 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.

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

{¶14} IT IS ORDERED THAT:

{¶15} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶16} 2) Defendant (Southeastern Correctional Institution) pay plaintiff (Douglas G. Zalewski) \$100.00 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Douglas G. Zalewski, #401-400
5900 B.I.S. Road
Lancaster, Ohio 43130

Plaintiff, Pro se

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

For Defendant

RDK/laa
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