

[Cite as *Rollins v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2609.]

IN THE COURT OF CLAIMS OF OHIO

JACK ROLLINS	:	
Plaintiff	:	
v.	:	CASE NO. 2002-08599-AD
OHIO DEPT. OF REHABILITATION AND CORRECTIONS	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) Plaintiff, Jack Rollins, an inmate incarcerated at defendant's Lebanon Correctional Institution (LeCI) has alleged that on March 28, 2001 his television set was confiscated by LeCI personnel and subsequently destroyed without any authorization. Plaintiff filed this complaint seeking to recover \$102.00, the replacement value of the television set.

{¶2} 2) In a totally unrelated matter, plaintiff stated he was transferred from LeCI to defendant's Southern Ohio Correction Facility (SOCF) on or about October 10, 2001. Plaintiff asserted that when he arrived at SOCF he was informed several items of his personal property were contraband and, consequently, he would have to mail these impermissible contraband articles out of the facility. Plaintiff alleged only about half the designated contraband items were mailed. Plaintiff further alleged the unmailed property was either kept, lost, or stolen by SOCF staff. Plaintiff seeks damages in the amount of \$490.73 for the alleged unmailed property.

{¶3} 3) In yet another unrelated matter, plaintiff maintained he was transferred to a segregation unit at SOCF on or about April 22, 2002. Incident to this transfer, SOCF

personnel received delivery of plaintiff's personal property and stored the property in the institution vault. Plaintiff alleged that when he regained possession of his property on May 8, 2002, he discovered several articles were missing. Plaintiff asserted SOCF employees either kept, lost, or stole his property. Plaintiff seeks damages on this claim in the amount of \$194.48 for property loss. Plaintiff also filed a claim for filing fee reimbursement.

{¶4} 4) Defendant denied any liability in the three unrelated matters. Defendant admitted a television set was confiscated from plaintiff's possession on or about March 28, 2001. This television set was confiscated because it was titled to another inmate, Snow #351-446. Defendant's records do not show plaintiff ever purchased or validly owned a television set while incarcerated at LeCI.

{¶5} 5) Additionally, defendant explained plaintiff's property was mailed to a designated address after plaintiff was transferred to SOCF. Defendant stated SOCF records show a box of plaintiff's property was mailed on November 8, 2001 to a Reva Davis. Postage for this mailing was paid by plaintiff and amounted to \$6.48. Defendant denied any of plaintiff's property was lost or stolen pursuant to his October 12, 2001 transfer to SOCF.

{¶6} 6) Finally, defendant denied any of plaintiff's property was lost or stolen when he was transferred to a segregation unit at SOCF. Defendant stated all of plaintiff's property was returned. Both plaintiff and defendant did not submit any evidence other than assertions.

## CONCLUSIONS OF LAW

{¶7} 1) 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.

{¶8} 2) 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} 3) 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} 4) 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} 5) Plaintiff's failure to prove delivery of the alleged stolen or lost property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶12} 6) 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} 7) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

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

{¶17} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT

Deputy Clerk

Entry cc:

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