



delivered to plaintiff after he arrived at the Madison Correctional Institution. Defendant contended plaintiff has failed to provide sufficient evidence to establish he possessed an adapter, headphones, and radio/cassette player at the time of the February 19, 2002 transfer.

{¶5} 5) On March 31, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff reasserted all his property claimed was either lost or stolen while under the control of defendant's staff. Plaintiff explained he possessed two rings, one, which was returned to his possession and another, which was lost or stolen during the February 19, 2002 transfer procedure. Plaintiff again related his headphones, adapter, and radio/cassette player were in defendant's custody and lost or stolen. Plaintiff submitted titles showing he previously owned a ring, adapter, headphones, and radio/cassette player.

#### CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 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.

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

{¶10} 5) 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.

{¶11} 6) 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.

{¶12} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his property was 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.

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

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

{¶15} 2) The court shall absorb the court costs of this case in excess of the filing fee.

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