

[Cite as *Allizar v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2966.]

IN THE COURT OF CLAIMS OF OHIO

RASHI ALLIZAR :
Plaintiff :
v. : CASE NO. 2002-06499-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
REHABILITATION AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) Plaintiff, Rashi Allizar, an inmate incarcerated at defendant's Grafton Correctional Institution (GCI), has asserted he was ordered on or about July 13, 2000 to authorize the mailing of his personal property to a designated addressee. Plaintiff related he signed a cash slip authorizing the mailing of property to his son. However, plaintiff has maintained his son never received a package in the mail from GCI containing plaintiff's property items.

{¶2} 2) Consequently, plaintiff filed a complaint seeking to recover \$750.00, the estimated value of personal property which was supposed to be mailed. Plaintiff also seeks recovery of the \$25.00 filing fee.

{¶3} 3) Defendant has asserted GCI personnel mailed four boxes of plaintiff's property to the following designated address: Kevin Owens at 1114 Warwick Avenue, Toledo, Ohio. Defendant's records show plaintiff's property was mailed from GCI on September 14, 2000.

{¶4} 4) Plaintiff subsequently filed an amended complaint alleging his claim of property concerns items which were delivered to GCI personnel and then were lost or stolen while under

defendant's control. Plaintiff asserted his claim is for property which was stored under defendant's custody and not shipped out of the institution. Plaintiff's claim now involves the purported loss of the following: a pair of house shoes, a saxophone neck strap, five saxophone reeds, five Islamic books, legal material, paper, a Dashiki, a pair of pajamas, and a chess set. Plaintiff's total property loss claim amounts to \$319.50.

{¶5} 5) Defendant denied taking possession of the following property represented in plaintiff's amended complaint: five reeds, five Islamic books, a Dashiki, paper, and a chess set. These items were not listed on plaintiff's property inventory dated July 12, 2000. Defendant acknowledged packing plaintiff's house shoes, legal materials, and pajamas. However, defendant contended these articles were returned to plaintiff. Additionally defendant admitted packing a saxophone neck strap and subsequently losing it. Defendant admitted liability for the loss of the saxophone neck strap in the amount of \$8.50.

{¶6} 6) On April 7, 2003, plaintiff filed a motion for extension of time to submit a response to the defendant's investigation report.

{¶7} 7) Plaintiff filed a response on April 23, 2003. Plaintiff reasserted all property claimed was lost while under defendant's control.

CONCLUSIONS OF LAW

{¶8} 1) 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.

{¶9} 2) 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.

{¶10} 3) 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} 4) Plaintiff's failure to prove delivery of certain property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶12} 5) Plaintiff has failed to prove, by a preponderance of the evidence, any property packed was lost or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶13} 6) Negligence has been shown in respect to the loss of a saxophone neck strap. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶14} 7) Defendant is liable to plaintiff in the amount of \$8.50, plus the \$25.00 filing fee which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Dept. of Rehab. And Corr.* (1990), 62 Ohio Misc. 2d 19.

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

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's motion for extension of time is MOOT;

{¶18} 2) Plaintiff's claim is GRANTED in part and DENIED in part judgment is rendered in favor of the plaintiff;

{¶19} 3) Defendant (Ohio Department of Rehabilitation and Correction) pay plaintiff (Rashi Allizar) \$33.50 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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