

toothbrush, one bottle of vitamins, one can of barbeque sauce, one pack of cheese, one can of crab meat, eight "Honey Buns," four fish steaks, one brownie, one jar of grape jelly, two fruit punch mixes, one bottle of hot sauce, one shoe string, one box of tea bags, one bottle of lotion, one hair spray, one gallon of glue, two boxes of wooden sticks, one television antenna, one radio antenna, one cable wire, one sweatshirt, four pairs of underwear, and a television set. Plaintiff filed this claim seeking to recover \$328.71 for property loss, plus \$25.00 for filing fee reimbursement.

{¶6} 6) Defendant denied any liability in this matter. Defendant explained plaintiff was transferred to a segregation unit on June 27, 2001 for an institutional rule violation. As part of the transfer process, plaintiff's personal property was inventoried and packed by GCI staff. Defendant related plaintiff possessed property items in excess of institutional property possession limits. Consequently, plaintiff was charged with contraband possession. Defendant asserted plaintiff was given the option to either authorize the mailing of the declared contraband to a designated addressee or consent to the destruction of the contraband. Defendant maintained plaintiff and GCI personnel on two separate occasions sorted contraband items for either mail out or destruction. Defendant insisted plaintiff's property was either mailed or destroyed pursuant to plaintiff's instructions. A total of three boxes of property were eventually mailed to plaintiff's mother's address. Defendant denied any of plaintiff's property was damaged during pack-up or mailing. Defendant denied any of plaintiff's property was lost while under the control of GCI staff.

Defendant provided a list of plaintiff's property articles which were either mailed or not confiscated. Defendant produced a document wherein plaintiff authorized the destruction of certain articles.

{¶7} 7) Plaintiff filed a response asserting his property was lost, damaged, or destroyed as a proximate cause of defendant's

violations of the Ohio Administrative Code. Plaintiff further asserted he suffered property loss as result of negligent conduct on the part of GCI staff. Plaintiff maintained any property he claimed as lost was not mailed out of GCI to his mother's address. Plaintiff earlier submitted an affidavit from his mother, Modestine Gray, who attested she received three boxes of items mailed from GCI purportedly containing plaintiff's property. Gray stated one box contained clothing and the other two boxes contained: "trash, empty pop cans, dirt of the ground, empty potato chip bags, used styrofoam cups, empty disinfectant bottles, used paper towels, and empty toilet paper rolls." The three boxes mailed from GCI weighed a total of eighty-nine pounds. Plaintiff denied he authorized the mail out of any property other than clothing. Plaintiff reiterated his television set was damaged by defendant's employee.

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) In *Bell v. Wolfish* (1979), 441 U.S. 520, the U.S. Supreme Court stated:

"Prison officials are accorded wide-range deference on the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security; such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated the response to these considerations, courts should ordinarily defer to their expert judgment in such matters, even though prison administrators may be 'experts' only by Act of Congress or of State Legislature";

{¶13} 6) The state cannot be sued for the exercise of any executive or planning function involving the making of a policy decision characterized by the utilization of a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.

{¶14} "7) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. In the instant claim plaintiff has failed to prove defendant acted without proper authority in completing any destruction of contraband items.

{¶15} 8) 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.

{¶16} 9) Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged or lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v.*

Department of Rehabilitation and Correction (1998), 97-10146-AD.

{¶17} 10) Plaintiff has failed to prove a causal connection between the damage to his television set and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Institution* (1998), 97-11819-AD.

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

{¶19} IT IS ORDERED THAT:

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

{¶21} 2) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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