

[Cite as *Aliane v. Southeastern Correctional Inst.*, 2003-Ohio-2969.]

IN THE COURT OF CLAIMS OF OHIO

MALEK B. ALIANE	:	
Plaintiff	:	
v.	:	CASE NO. 2002-07916-AD
SOUTHEASTERN CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
: : : : : : : : : : : : : : :		

FINDINGS OF FACT

{¶1} 1) On or about May 14, 2002, plaintiff, Malek B. Aliane, an inmate incarcerated at defendant, Southeastern Correctional Institution (SCI), was transferred to a segregation unit. When plaintiff entered the segregation unit he was placed in a holding cell and searched. During the search, plaintiff was found to be in possession of twenty-four photographs. The photographs constituted impermissible property and were consequently, confiscated. Plaintiff indicated he was assured the confiscated photographs would be added to his other property items that were stored under defendant's care.

{¶2} 2) On May 30, 2002, plaintiff was released from the segregation unit and recovered his personal property. Upon inspecting his property, plaintiff discovered his twenty-four photographs were not among the returned articles. Plaintiff has asserted the photographs were never found. He has, therefore, filed this complaint to recover \$2,400.00, the declared value of the alleged missing photographs.

{¶3} 3) Plaintiff maintained that when he initially reported his photographs were missing he was told a search for the missing property would be conducted. Plaintiff alleged defendant's personnel did not search for his photographs.

{¶4} 4) Defendant denied confiscating or taking possession of any photographs from plaintiff on or about May 14, 2002. Defendant acknowledged plaintiff reported the theft or loss of photographs on June 15, 2002. Defendant stated this theft/loss was investigated, but no photographs were located. Defendant has no record of any photographs belonging to plaintiff entered the custody of SCI staff. Additionally, defendant disputed plaintiff's damage claim as excessive and speculative.

{¶5} 5) On March 27, 2003, this court issued an order granting plaintiff's motion for extension of time to file a response to defendant's investigation report. He was granted until April 21, 2003 to file the response. A check of the docket reveals plaintiff has failed to submit a response.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 4) Plaintiff's failure to prove delivery of photographs 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.

{¶10} "5) Plaintiff has failed to prove, by a preponderance of the evidence, any photographs listed were 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.

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

{¶12} IT IS ORDERED THAT:

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

{¶14} 2) The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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