

[Cite as *Bell v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2970.]

IN THE COURT OF CLAIMS OF OHIO

CHRISTOPHER D. BELL :  
Plaintiff :  
v. : CASE NO. 2002-08157-AD  
OHIO DEPARTMENT OF : MEMORANDUM DECISION  
REHABILITATION AND CORRECTION :  
Defendant :  
: : : : : : : : : : : : : : : : : :

## FINDINGS OF FACT

{¶1} 1) On July 21, 2001, plaintiff, Christopher D. Bell, an inmate incarcerated at defendant's Grafton Correctional Institution (GCI), was transferred to a segregation unit. Plaintiff's personal property was delivered into defendant's custody incident to this transfer.

{¶2} 2) Plaintiff has asserted several items of his personal property were lost while under defendant's control. Specifically plaintiff claimed the following property items are missing: trial transcripts, a robe, three wash cloths, three towels, a pair of boots, and three rolls of dental floss. Consequently, plaintiff filed this complaint seeking to recover \$1,135.15, the estimated replacement cost of his alleged missing property. On November 4, 2002, plaintiff submitted the filing fee.

{¶3} 3) Defendant denied any of plaintiff's property was lost while under the control of GCI staff. Defendant maintained all of plaintiff's property was packed on July 21, 2001 and all packed property was subsequently returned to plaintiff's possession. Defendant acknowledged receiving delivery of a robe, two rolls of dental floss, and three legal mail bags among the

articles of plaintiff's property which were packed on July 21, 2001. Defendant related all these items were returned to plaintiff. Defendant denied packing an additional dental floss, wash cloths, towels, or boots. Defendant surmised if a trial transcript was packed it would have been contained in one of the three legal mail bags that were eventually returned to plaintiff.

{¶4} 4) On April 1, 2003, plaintiff filed a motion for extension of time to submit a response to defendant's investigation report.

{¶5} 5) Plaintiff filed a response. Plaintiff reasserted all property claimed in his complaint was lost while under defendant's control.

#### CONCLUSIONS OF LAW

{¶6} 1) Plaintiff is not entitled to expenses, i.e., copying costs, related to the prosecution of this case. *Hamman v. Witherstrine* (1969), 20 Ohio Misc. 77. 252 N.E. 2d 196.

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 5) Plaintiff's failure to prove delivery of certain alleged 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.

{¶11} 6) Plaintiff must produce evidence which affords a reasonable basis for the conclusion of 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.

{¶12} 7) Plaintiff has failed to prove, by a preponderance of the evidence, the remaining property items claimed were lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶13} Plaintiff's motion for extension of time is MOOT. Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision file concurrently herewith. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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