

[Cite as *Rescina v. Mansfield Correctional Inst.*, 2003-Ohio-2975.]

IN THE COURT OF CLAIMS OF OHIO

NICOLA RESCINA :
Plaintiff :
v. : CASE NO. 2002-10071-AD
MANSFIELD CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

~~{¶1}~~ 1) On or about March 22, 2002, plaintiff, Nicola Rescina, an inmate, was transferred from defendant, Mansfield Correctional Institution to the Belmont Correctional Institution. Plaintiff's personal property was packed and delivered into the custody of defendant's staff incident to the transfer procedure.

{¶2} 2) Plaintiff has asserted his television set, twenty packs of cigarettes, and twenty-five boxes of cigars were lost during or before transfer. Consequently, plaintiff filed this complaint seeking to recover \$150.79 for the value of his television, \$102.50, the replacement cost of the alleged lost tobacco products, \$6.50 for postage, and \$25.00 for filing fee reimbursement.

{¶3} 3) On February 15, 2002, plaintiff's property was packed and inventoried by defendant's personnel. A copy of the inventory shows among the packed property items were twenty packs of cigarettes and forty boxes of cigars.

~~{14}~~ 4) On March 13, 2002, defendant's employee, Sgt. Williams, confiscated eighteen boxes of cigars and eleven packs of cigarettes from plaintiff's possession. Plaintiff was issued a conduct report for possession of contraband since he could not

prove he had purchased the confiscated tobacco products. Plaintiff was subsequently found guilty of contraband possession and the confiscated articles were not returned.

{¶5} 5) Defendant admitted liability for the loss of plaintiff's television set, but denied any liability for the loss of any tobacco products. Defendant explained a shakedown search of plaintiff's property was conducted on March 13, 2002. Among the property items were thirty-three boxes of cigars and eleven packs of cigarettes. Eighteen boxes of cigars and all the cigarettes were confiscated as contraband. Defendant asserted plaintiff has no right to recovery for the loss of contraband property. Defendant further asserted plaintiff has failed to prove any cigarettes or cigars he rightfully owned were lost while under the control of Mansfield Correctional Institution staff.

CONCLUSIONS OF LAW

{¶6} 1) Plaintiff has no right to assert a claim for lost property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

{¶7} 2) 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, to any essential issues in the case, he fails to sustain the burden as to such issues. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶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 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.

{¶10} 5) 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.

{¶11} 6) Plaintiff has failed to prove, by a preponderance of the evidence, any cigarettes or cigars he rightfully owned were lost as a proximate result of any negligence on the part of the defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶12} 7) Negligence has been shown in respect to the lost television set. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶13} 8) Postage expenses are costs which cannot be taxed to a judgment. *Hamman v. Witherstrine* (1969), 20 Ohio Misc. 77.

{¶14} 9) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶15} 10) The court finds defendant liable to plaintiff in the amount of \$150.79, plus the \$25.00 filing fee which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Dept. of Rehab. And Corr.* (1990), 62 Ohio Misc. 2d 19.

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

{¶17} IT IS ORDERED THAT:

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

{¶19} 2) Defendant (Mansfield Correctional Institution) pay plaintiff (Nicola Rescina) \$175.79 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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