

IN THE COURT OF CLAIMS OF OHIO

WALTER LUCKEY :
Plaintiff :
v. : CASE NO. 2002-10429-AD
MANSFIELD CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) On June 20, 2002, plaintiff, Walter Luckey, an inmate incarcerated at the Richland Correctional Institution (RiCI), was scheduled to be transferred to the Grafton Correctional Institution (GCI). As part of the transfer process, plaintiff's personal property was inventoried, packed, and delivered into the custody of RiCI personnel. Plaintiff was present at the time his property was packed and delivered.

{¶2} 2) Plaintiff and his personal property were transported from RiCI to GCI in a vehicle operated by employees of defendant, Mansfield Correctional Institution. After arriving at GCI, plaintiff regained possession of his personal property. When plaintiff regained possession of his property he complained his television set was not among the returned articles. Plaintiff has suggested his television set was lost in transport from RiCI to GCI. He has consequently filed this complaint seeking to recover \$160.00, the replacement value of his television set, plus \$25.00 for filing fee reimbursement.

{¶3} 3) Evidence has shown plaintiff purchased a television set in January, 2002, for \$160.00. A copy of plaintiff's property

inventory compiled on June 20, 2002, at RiCI was submitted. This inventory does not list a television set. A copy of plaintiff's property inventory compiled on June 24, 2002, at GCI was submitted.

This inventory does not list a television set. Although evidence seems to establish, a television set was not received by RiCI personnel, GCI staff, or any employee of defendant, Mansfield Correctional Institution, plaintiff maintained he delivered his television set into the custody of RiCI personnel on June 20, 2002.

{¶4} 4) Defendant denied liability in this matter based on the fact no evidence has been offered to establish plaintiff's television set was delivered to defendant during the transfer process.

{¶5} 5) On April 28, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his television set was delivered to defendant's employees and the set was subsequently lost while under defendant's control.

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 a television set 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, his television set 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.

{¶11} Having considered all the evidence in the claim file and, for reasons set forth in the memorandum decision filed concurrently herewith. Judgment is rendered in favor of the 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Walter Luckey, #421-252
2500 S. Avon-Belden Road
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Plaintiff, Pro se

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RDK/tad
5/14

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