

[Cite as *White v. Southeastern Correctional Inst.*, 2003-Ohio-3110.]

IN THE COURT OF CLAIMS OF OHIO

STEPHEON L. WHITE	:	
Plaintiff	:	
v.	:	CASE NO. 2002-10933-AD
SOUTHEASTERN CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On or about May 16, 2002, plaintiff, Stepheon L. White, an inmate incarcerated at defendant, Southeastern Correctional Institution (SCI), was transferred from the institution for an outside court appearance. Incident to this transfer, plaintiff delivered his personal property into the custody of SCI staff.

{¶2} 2) Plaintiff has asserted his cassette player, headphones, and gym shoes were lost while under defendant's control. Consequently, plaintiff filed this complaint seeking to recover \$128.45 for property loss, plus \$25.00 for filing fee reimbursement.

{¶3} 3) Defendant admitted liability for the loss of plaintiff's gym shoes. However, defendant denied the headphones and cassette player were lost. On November 1, 2002, SCI personnel confiscated a cassette player from plaintiff's possession which actually belonged to another inmate. Defendant suggested this confiscated cassette player was the same cassette player plaintiff claimed as lost after the item was delivered to defendant's staff on or about May 16, 2002. Defendant believed a cassette player and headphones were returned to plaintiff after he came back to SCI from his outside court appearance.

{¶4} 4) Plaintiff submitted copies of titles for a cassette player and a set of headphones. These titles issued on October 26, 2001 are indicia of the fact plaintiff rightfully owned a radio/cassette player and headphones. Plaintiff maintained his radio/cassette player and headphones were lost while under defendant's control during May, 2002. Evidence has shown defendant packed plaintiff's radio/cassette player and headphones on May 15, 2002. Plaintiff filed informal complaints regarding the loss of his radio/cassette player. These complaints were filed on October 25, 2002 and November 21, 2002. Plaintiff filed a response in which he acknowledged he was not the rightful owner of the confiscated cassette player. Plaintiff seemingly reasserted his radio/cassette player and headphones were lost and not in his possession at the time a separate and distinct cassette player was confiscated from him.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 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.

{¶8} 4) In respect to the loss of all property items claimed, negligence by defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶9} 5) Plaintiff has suffered damages in the amount of \$128.45, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶10} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$153.45 which includes the filing fee. Court costs are assessed against defendant. 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:

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RDK/tad
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