

[Cite as *Hamilton v. Ohio State Penitentiary*, 2003-Ohio-3131.]

IN THE COURT OF CLAIMS OF OHIO

ANDRE' HAMILTON :
Plaintiff :
v. : CASE NO. 2002-09846-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Andre' Hamilton, an inmate incarcerated at defendant, Ohio State Penitentiary, has alleged that on or about October 18, 2001, defendant's employees entered his cell, conducted a shakedown search, and confiscated several items of property. According to plaintiff, the confiscated property was destroyed. On January 13, 2003, plaintiff submitted the filing fee.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$360.00, the estimated value of property allegedly destroyed.

{¶3} 3) Defendant denied any employees destroyed plaintiff's property incident to a shakedown search.

{¶4} 4) On April 11, 2003, plaintiff filed a response. Plaintiff reasserted that all property confiscated by defendant was destroyed.

CONCLUSIONS OF LAW

{¶5} 1) 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.

{¶6} 2) 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} 3) 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.

{¶8} 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.

{¶9} 5) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost, discarded, or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶10} 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:

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Plaintiff, Pro se

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RDK/tad

5/14

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