

IN THE COURT OF CLAIMS OF OHIO

JOHN F. SZORADY	:	
Plaintiff	:	
v.	:	CASE NO. 2002-10852-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On or about August 10, 2001, plaintiff John F. Szorady, an inmate incarcerated at defendant's Grafton Correctional Institution (GCI), was transferred to an isolation unit for an institutional rule violation.

{¶2} 2) Plaintiff's personal property was packed and delivered into the custody of GCI staff incident to the transfer. Plaintiff has alleged his two blankets, four towels, and four washcloths were not packed by GCI personnel and were lost. Plaintiff has further alleged his house robe and two packs of cigarettes were lost while under the control of GCI staff while he was in isolation. Additionally, plaintiff has asserted his headphones were lost and five packs of cigarettes were damaged by GCI officers. According to plaintiff, the headphones were substituted for another set of headphones which were in a damaged condition. Plaintiff also claimed his house slippers were lost at some time while stored in the GCI vault.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$139.22, the replacement value of all items he asserted were either lost or damaged. On February 6, 2003, plaintiff submitted the filing fee.

{¶4} 4) Defendant denied ever packing or exercising control over plaintiff's blankets, towels, washcloths, and slippers. Defendant acknowledged packing a single

towel and set of headphones belonging to plaintiff. These items were returned to plaintiff's possession. Defendant denied damaging or losing any of plaintiff's cigarettes. Defendant admitted opening plaintiff's packs of cigarettes to investigate allegations concerning the use of drugs by plaintiff. Defendant denied liability for the cigarettes becoming stale from exposure to air after the items were examined for drugs. Furthermore, defendant disputed plaintiff rightfully owned the cigarettes since he did not produce any commissary receipts establishing he purchased the cigarettes. Five of seven packs of cigarettes were returned to plaintiff on October 15, 2002. Defendant admitted packing and losing plaintiff's robe.

{¶5} 5) Evidence has shown defendant packed plaintiff's headphones, seven packs of cigarettes, a towel, and a robe on August 10, 2001. Defendant did not pack four additional towels, washcloths, personal blankets, or house slippers on August 10, 2001. Evidence has shown plaintiff and his personal property were transferred to the Southern Ohio Correctional Facility on October 15, 2002. Among the transferred property items were a set of altered headphones, a single towel, and five packs of cigarettes.

{¶6} 6) Plaintiff filed a response insisting his property claimed was lost or damaged while under defendant's control. Plaintiff also contended defendant negligently failed to pack certain items on August 10, 2001.

CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 4) Plaintiff's failure to prove delivery of a set of towels (four), washcloths, personal blankets, and house slippers 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. Consequently, plaintiff's claims for these items are denied.

{¶11} 5) Plaintiff has failed to prove, by a preponderance of the evidence, any headphones listed were switched or damaged as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD. Accordingly, plaintiff has failed to prove defendant's acts rendered his five packs of cigarettes unusable.

{¶12} 6) Negligence has been shown in respect to the loss of a robe and two packs of cigarettes. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶13} 7) Defendant is liable to plaintiff in the amount of \$30.78, 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.

{¶14} 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 \$55.78, 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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