

[Cite as *Smith v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-3565.]

IN THE COURT OF CLAIMS OF OHIO

STEVEN SMITH	:	
Plaintiff	:	
v.	:	CASE NO. 2003-01571-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On August 9, 2002, plaintiff, Steven Smith, an inmate incarcerated at defendant's Warren Correctional Institution (WCI), had all his personal property inventoried and packed in preparation for a transfer to defendant's, Richland Correctional Institution (RiCI). Plaintiff's packed property was stored under the custody and control of WCI staff until the items were transferred to RiCI.

{¶2} 2) On August 12, 2002, plaintiff was transferred from WCI to RiCI. The next day plaintiff regained possession of his personal property. Plaintiff subsequently complained that several items of his personal property were not forwarded to RiCI.

{¶3} 3) Plaintiff contended the following articles are missing: a pair of personal eyeglasses, a set of headphones, a tube of toothpaste, and four bars of soap. Consequently, plaintiff filed this complaint seeking to recover \$181.54, the replacement costs of his missing property which plaintiff asserts was lost or stolen during the transfer process. Plaintiff submitted the filing fee with the complaint.

{¶4} 4) Plaintiff submitted a copy of his property inventory compiled on August 9, 2002 at WCI. This inventory lists, among other packed property, a pair of eyeglasses, a

set of headphones, two tubes of toothpaste, and five bars of soap. Plaintiff submitted a copy of his property inventory compiled on August 13, 2002, at RiCI. This inventory does not list a pair of eyeglasses or a set of headphones. Listed on the August 13, 2002 inventory is one tube of toothpaste and one bar of soap.

{¶5} 5) Defendant denied any liability in this matter. Defendant argued plaintiff has failed to prove any of his property was lost or stolen while under the control of defendant's personnel. The trier of fact disagrees.

{¶6} 6) Plaintiff filed a response insisting his property was lost or stolen while under defendant's control. Plaintiff maintained the property inventories of August 9, 2002 and August 13, 2002 are sufficient evidence to establish he suffered the loss claimed. Plaintiff resubmitted an affidavit from his mother, Patty Leonard, who stated she purchased a pair of eyeglasses for plaintiff for \$150.00 during the summer of 2001. Leonard further stated she mailed the eyeglasses to WCI.

CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 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.

{¶11} 5) Negligence by defendant has been shown in respect to the loss of all

property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶12} 6) Plaintiff has suffered damages in the amount of \$181.54, 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.

{¶13} 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 \$206.54 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
5/20
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