

[Cite as *Wilson v. Southeastern Correctional Inst.*, 2003-Ohio-3741.]

IN THE COURT OF CLAIMS OF OHIO

LAWRENCE E. WILSON :

Plaintiff :

V. :

CASE NO. 2001-12088-AD

SOUTHEASTERN CORRECTIONAL :  
INSTITUTION

MEMORANDUM DECISION

Defendant

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## FINDINGS OF FACT

{¶1} 1) At sometime between June through August, 2000, plaintiff, Lawrence E. Wilson, an inmate incarcerated at defendant, Southeastern Correctional Institution (SCI), delivered a box containing numerous legal materials to SCI personnel for mailing to a designated address. According to plaintiff, the box he delivered was packed with legal materials and other property including but not limited to pleadings, motions, orders, judgments, trial transcripts, memoranda, briefs, affidavits, research materials, correspondence, grievances, and other personal property.

{¶2} 2) Plaintiff asserted he authorized the mailing of the parcel containing his legal materials by having an inmate account withdrawal slip completed. Although the parcel was delivered to SCI mailroom staff and a mailing was authorized, the parcel was never mailed. Plaintiff contended the parcel was lost or destroyed while under the custody and care of SCI personnel. Plaintiff first complained about the loss of the box containing legal materials in either May or June of 2001. Plaintiff subsequently filed this complaint seeking to recover \$2,500.00, the estimated value of the property contained in the box plaintiff delivered to defendant at sometime between June-August 2000.

{¶3} 3) Plaintiff submitted an affidavit from defendant's employee, Sgt. Karl

Flugharty, who packed the box containing plaintiff's legal material. Sgt. Flugharty stated he packed a box with plaintiff's legal material and delivered the packed sealed parcel to the SCI mailroom for mailing. The packed box measured approximately "18-inches in length, 12-inches in width, and 10-inches in depth." Sgt. Flugharty recollected the box was "full of legal papers and documents." Additionally, Flugharty stated, the necessary authorization for paying postage on the parcel was completed. Defendant's mailroom has no record of ever receiving the parcel.

{¶4} 4) Defendant denied, for lack of knowledge, any liability in this matter. Defendant did not provide a mailroom log for the time period in question to establish if the plaintiff's parcel had been mailed. Defendant did not provide any evidence regarding withdrawals from plaintiff's inmate account for postage costs. Defendant ultimately did not provide any evidence to show the parcel was mailed after it was delivered into the hands of SCI mailroom staff.

{¶5} 5) The trier of fact finds evidence establishes plaintiff's parcel containing legal material was lost or destroyed while under the care of SCI personnel. This action involves a case of simple negligence.

{¶6} 6) Defendant contended plaintiff has failed to provide substantial proof of damages. Damages in this claim are confined to the reasonable value of the personal property contained in the unmailed parcel. Plaintiff has not submitted sufficient evidence to establish his damage claim.

#### 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) 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.

{¶10} 4) Negligence on the part of defendant has been shown in respect to the loss of the delivered parcel. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶11} 5) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶12} 6) Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782.

{¶13} 7) The court finds defendant liable to plaintiff in the amount of \$200.00, 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.

{¶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 \$225.00, 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/laa

6/17

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