

[Cite as *Carter v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-4284.]

IN THE COURT OF CLAIMS OF OHIO

DOMINGO CARTER :
Plaintiff :
v. : CASE NO. 2002-11042-AD
DEPARTMENT OF REHABILITATION : MEMORANDUM DECISION
AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) On or about November 12, 2002, plaintiff, Domingo Carter, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (SOCF), was transferred to a disciplinary confinement unit. Plaintiff's personal property was delivered into the custody of SOCF staff incident to his transfer.

{¶2} 2) On or about November 25, 2002, plaintiff was released from disciplinary confinement and attempted to retrieve his property. Plaintiff has asserted several items of his personal property were not returned. Plaintiff has assumed the alleged missing items were lost or stolen while under the control of SOCF personnel.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$196.00, the estimated value of his alleged missing property. Plaintiff claimed the following items are missing: thirty photographs, a radio/cassette player with headphones, five cassette tapes, four books, a pair of shower shoes, an institutional identification card, legal work, personal mail, and miscellaneous

articles purchased from the institution commissary. Plaintiff was not required to pay a filing fee to prosecute this action.

{¶4} 4) Defendant denied any liability in this matter. Defendant acknowledged its employees packed property which had been stored in plaintiff's cell. However, all property items packed were state issue property. Defendant related plaintiff made several complaints about stolen property which were investigated. No property belonging to plaintiff was recovered. Defendant denied any of plaintiff's property was stolen while under the control of SOCF staff. Defendant denied receiving delivery of the alleged missing property claimed by plaintiff.

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) Plaintiff's failure to prove delivery of his alleged missing property items 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.

{¶9} 5) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property was lost 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 the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of 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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For Defendant

RDK/laa
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