

Defendant contended the typewriter was not lost.

{¶6} 6) Defendant acknowledged plaintiff's radio was confiscated on October 1, 2002, by SOCF employee C/O George. Defendant denied the radio was damaged while under the custody of C/O George. No damage to the radio was observed. Plaintiff did not make any complaints regarding property damage until the instant action was filed. The allegedly damaged radio was transferred with plaintiff from SOCF to RCI on January 21, 2003.

{¶7} 7) Defendant argued plaintiff is not entitled to reimbursement of the medical co-pay he was assessed for treatment on September 5, 2002. Defendant explained plaintiff had shoulder surgery on August 15, 2002, and was instructed to have ensuing follow-up care provided by the SOCF infirmary. Defendant maintained plaintiff eventually ignored the advisements regarding follow-up care which ultimately resulted in a new shoulder condition unrelated to the condition necessitating surgery. Therefore, because under defendant's definition, plaintiff sought medical care on September 5, 2002, for a new condition not a follow-up to the August 15, 2002, surgical procedure, he was charged a medical co-pay.

{¶8} 8) On June 30, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff insisted his typewriter was lost while under the control of SOCF staff. Plaintiff denied his typewriter was among the property items transferred from SOCF to RCI on January 21, 2003. Plaintiff submitted a copy of his property inventory compiled at RCI and dated January 22, 2003. This inventory does not list a typewriter.

{¶9} 9) Plaintiff filed two affidavits from fellow inmates, Rodney Fussell and Shannon Pennington. These affidavits address the issue of damage to plaintiff's radio at the time the property was confiscated by C/O George on October 1, 2002. Inmate Fussell stated he observed C/O George carrying plaintiff's radio. Fussell further stated he saw the radio hit a cell door while C/O George was carrying the item. Fussell also related he observed C/O George drop the radio on the cell block floor. According to Fussell, the radio fell to the floor and "bounced twice, once on its end, then on its face." Inmate Pennington related he witnessed C/O George handling plaintiff's radio. Pennington indicated C/O George carried the radio through the opening of plaintiff's cell door, "then banged it against the iron railing banister in front of Billups' cell."

{¶10} 10) Plaintiff professed he is entitled to receive reimbursement for the \$3.00 co-pay he was assessed. Plaintiff argued the co-pay involved a follow-up treatment for his shoulder surgery and was, consequently, not subject to the co-pay policy.

{¶11} 11) After reviewing all the information presented, the trier of fact does not find plaintiff's evidence to be particularly persuasive to the issues asserted.

CONCLUSIONS OF LAW

{¶12} 1) Plaintiff's claim regarding his medical co-pay is dismissed. This court lacks jurisdiction over a controversy involving a decision by a defendant institution to assess a medical co-pay on a plaintiff pursuant to an interpretation of policy language. The state cannot be sued for the exercise of any executive planning function involving the making of a policy decision characterized by a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.

{¶13} 2) 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 of using the same degree of care as it would use with its own property.

{¶14} 3) 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.

{¶15} 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.

{¶16} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶17} 6) Plaintiff has failed to show any causal connection between any damage to his radio set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶18} 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:

David Billups, #211-903
P.O. Box 7010
Chillicothe, Ohio 45601

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43223

For Defendant

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