

[Cite as *Kasler v. S. Ohio Correctional Facility*, 2003-Ohio-4651.]

IN THE COURT OF CLAIMS OF OHIO

SHAWN KASLER	:	
Plaintiff	:	
v.	:	CASE NO. 2003-03540-AD
SOUTHERN OHIO CORRECTIONAL FACILITY	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On or about October 9, 2002, plaintiff, Shawn Kasler, an inmate incarcerated at defendant, Southern Ohio Correctional Facility, was transferred from the facility's general population to an isolation unit.

{¶2} 2) Plaintiff's personal property, which was stored in his cell, was packed and delivered into defendant's custody incident to the transfer.

{¶3} 3) Plaintiff has alleged defendant failed to pack his radio and boots at the time he was sent to isolation. Plaintiff asserted the boots and radio were never located. Consequently, plaintiff filed this complaint seeking to recover \$92.99, the estimated value of the alleged lost property items. Plaintiff submitted the filing fee with the complaint.

{¶4} 4) Defendant denied any liability in this matter. Defendant denied receiving delivery of plaintiff's boots and radio. Defendant contended all of plaintiff's property that was stored in his cell was packed on October 9, 2002.

{¶5} 5) On June 27, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff suggested his boots and radio were stolen from his cell. Plaintiff indicated his property was left in his cell for over four hours before any items were packed by defendant's personnel. Plaintiff insisted his boots and radio were either lost or

stolen as a result of negligence on the part of defendant's staff.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 4) Plaintiff's failure to prove delivery of boots and a radio 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.

{¶10} 5) Plaintiff has failed to prove, by a preponderance of the evidence, his listed 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.

{¶11} 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//DRB/laa
8/11
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