

IN THE COURT OF CLAIMS OF OHIO

JEFFREY A. BELLINI	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02420-AD
BELMONT CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On October 20, 2002, plaintiff, Jeffrey A. Bellini, an inmate incarcerated at defendant, Belmont Correctional Institution (BCI), suffered property loss when his cassette player, headphones, cassette tape, and batteries were stolen. The stolen property items were left unsecured, stored under a pillow on plaintiff's bunk.

{¶2} 2) Immediately after discovering his property had been stolen, plaintiff reported the theft to defendant's employee, C/O Mosa. Rather than conducting a search for plaintiff's stolen property, C/O Mosa notified fellow BCI employee, Lt. Clark, of the theft. Other than checking surveillance camera tapes of the area no other action to recover plaintiff's property was taken by defendant's staff.

{¶3} 3) Plaintiff's stolen articles were never recovered. Consequently, plaintiff filed this complaint seeking to recover \$77.56, the estimated replacement cost of a cassette player, headphones, cassette tape, and batteries. Plaintiff contended BCI personnel were charged with a duty to search for his property after being informed of the theft.

{¶4} 4) Defendant denied liability in this matter. Defendant stated an attempt

was made to recover plaintiff's property when BCI employees examined camera records of the area trying to identify a thief. Defendant has also suggested plaintiff's damage claim is inflated since his cassette player was purchased in 2000 and his headphones were purchased in 1998. Additionally, evidence has shown plaintiff received the cassette tape in 1999.

{¶15} 5) On July 18, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff insisted defendant breached a duty of care owed to him by not searching for his property.

CONCLUSIONS OF LAW

{¶16} 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.

{¶17} 2) The mere fact that a theft occurred is not enough to show defendant was negligent. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425.

{¶18} 3) Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶19} 4) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD.

{¶10} 5) 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.

{¶11} 6) 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.

{¶12} 7) Defendant's failure to search for plaintiff's stolen items constituted a

breach of defendant's duty to make reasonable attempts to recover stolen property. *Mullett*, supra.

{¶13} 8) Negligence on the part of defendant has been shown in respect to the loss of all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶14} 9) Postage and copying expenses are costs which cannot be taxed to a judgment. *Hamman v. Witherstrine* (1969), 20 Ohio Misc. 77.

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

{¶16} 11) 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 a 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.

{¶17} 12) Defendant is liable to plaintiff in the amount of \$40.00.

{¶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 plaintiff in the amount of \$40.00. 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
8/15
Filed 8/28/03
Sent to S.C. reporter 9/11/03