

[Cite as *Foster v. Ross Correctional Inst.*, 2003-Ohio-4930.]

IN THE COURT OF CLAIMS OF OHIO

FRANKIE A. FOSTER	:	
Plaintiff	:	
v.	:	CASE NO. 2002-04925-AD
ROSS CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) On May 30, 2001, plaintiff, Frankie A. Foster, an inmate incarcerated at defendant, Ross Correctional Institution (RCI), was transferred to an isolation unit based on an institutional rule violation; possession of contraband. Plaintiff remained in isolation at RCI until he was transferred to the Southern Ohio Correctional Facility (SOCF) on April 30, 2002.

{¶2} 2) All the property plaintiff had in his possession was packed and delivered into the custody of RCI staff incident to the May 30, 2001 transfer. Furthermore, plaintiff was ordered to authorize the mail out of the bulk of his property to a designated addressee. Plaintiff chose to have his property mailed to his mother, Anna Sorber at 353 Hampshire Drive Building A#8 in Hamilton, Ohio. On June 1, 2001, defendant's employee, officer William Monroe, delivered eight boxes of plaintiff's property to the U.S. Post Office in Chillicothe, Ohio. The eight boxes of property were mailed to Anna Sorber.

{¶3} 3) Plaintiff asserted defendant did not mail any of his commissary items to his mother, Anna Sorber. Plaintiff submitted a statement from Anna Sorber who related she received through the mail eight boxes containing plaintiff's property. Sorber further related none of the boxes contained tobacco products, food stuffs, or soft drinks. Plaintiff

also maintained additional valuable property items were not mailed to his mother. Plaintiff suggested his property was stolen or lost by defendant's personnel.

{¶4} 4) Plaintiff also asserted his typewriter, office supplies, and legal materials were confiscated by RCI staff on or about May 30, 2001. Plaintiff indicated the confiscated articles were never returned.

{¶5} 5) In another matter, plaintiff alleged that when he and his cellmate were sent to isolation, RCI staff misplaced two cartons of his cigarettes into his cellmate's packed property. Plaintiff contended the misplaced cigarettes were never added to his packed property.

{¶6} 6) In yet another incident plaintiff claimed his hygiene articles he purchased from the RCI commissary were confiscated by defendant on January 17, 2002. Plaintiff explained these confiscated items were scheduled to be mailed from the institution. However, the items were allegedly lost while under defendant's custody before a mail out could be completed.

{¶7} 7) Plaintiff claimed the following articles of property were either stolen, lost, damaged, or improperly confiscated: a typewriter, 20-30 correctable ribbons, 20-30 correction cassettes, 20-30 correction tapes, 5 print wheels, a wedding ring, a starfire ring, a cross (damaged), a clock, 3 blankets, 3 sheets, 8 electrical cords, 2 additional cords, 2 extension cords, 2 pairs of work boots, a pair of headphones (damaged), a cassette tape case (damaged), 30 cassette tapes, court transcripts, 2 watches, and miscellaneous commissary purchases. Plaintiff filed this complaint seeking to recover \$2,500.00, the statutory maximum damage award amount at the administrative determination level of this court. Plaintiff valued all property represented in this claim at nearly \$4,000.00. Plaintiff submitted the filing fee with the complaint.

{¶8} 8) Defendant denied any of plaintiff's property was lost, stolen, or damaged while under the control of RCI staff, with the exception of a ring. Defendant admitted liability for the loss of a ring valued at \$75.00. Defendant denied liability for the loss of any additional property items.

{¶9} 9) Defendant explained plaintiff was placed in isolation on May 30, 2001, on a contraband possession charge. All personal property in plaintiff's possession was

placed under defendant's control. Pursuant to a subsequent hearing on the contraband possession charge, plaintiff was ordered to either authorize the mailing of his property or have the property destroyed. Defendant related plaintiff chose to have his property mailed to his mother, Anna Sorber. On June 1, 2001, defendant's employee, William J. Monroe, Jr., delivered 8 boxes of plaintiff's property to the U.S. Post Office in Chillicothe, Ohio. The 8 boxes of property were mailed to Anna Sorber. Defendant maintained the following items claimed by plaintiff were packed and mailed: 6 correction cassettes, a clock, a blanket, 2 sheets, 12 cords, and commissary purchases.

{¶10} 10) Defendant has no record of packing the following: additional correction cassettes, correction tapes, print wheels, a ring, a cross, a blanket, a sheet, 4 cassette tapes, court transcripts, and 2 watches.

{¶11} 11) Defendant acknowledged a typewriter and 20 correctable ribbons were confiscated from plaintiff. The serial number on the seized typewriter indicates it belongs to the school at RCI. The seized correctable ribbons are still in the possession of RCI staff as part of a continuing investigation regarding security threat groups.

{¶12} 12) On March 22, 2002, plaintiff was transferred from RCI to SOCF. Among plaintiff's property items forwarded to SOCF were the following: a blanket, two pairs of boots, a set of headphones, legal work, a cassette tape case, 26 cassette tapes, and assorted commissary purchases including cigarettes.

{¶13} 13) Defendant denied losing any of plaintiff's commissary items incident to a January 18, 2002 pack up procedure. Defendant asserted the commissary items packed at RCI on January 18, 2002 were subsequently forwarded to SOCF. On or after April 11, 2002, plaintiff authorized the mailing of several articles of property to his mother. Defendant insisted plaintiff's property was mailed from SOCF.

{¶14} 14) Plaintiff filed a response insisting he is entitled to recover damages for the loss of all property claimed. Plaintiff submitted his own assertions as well as an affidavit from his former cellmate. The trier of fact does not find any allegation or document contained in plaintiff's response to be particularly persuasive in regard to the issues of theft, loss, or destruction of property in association with alleged negligence on the part of defendant.

CONCLUSIONS OF LAW

{¶15} 1) Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1984), 84-09071.

{¶16} 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 to make “reasonable attempts to protect, or recover” such property.

{¶17} 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.

{¶18} 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.

{¶19} 5) 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.

{¶20} 6) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶21} 7) Plaintiff’s failure to prove delivery of certain items of property to defendant constitutes a failure to show imposition of a legal bailment duty on the party of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶22} 8) In respect to the loss of one ring, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶23} 9) The court finds defendant liable to plaintiff in the amount of \$75.00, 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.

{¶24} 10) Plaintiff has failed to prove, by a preponderance of the evidence, any additional items of his property were lost, damaged, or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶25} 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 \$100.00, 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:

Frankie A. Foster, #236-099
P.O. Box 56
Lebanon, Ohio 45036

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

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