

[Cite as *Clapper v. Ohio Reformatory for Women*, 2003-Ohio-5469.]

IN THE COURT OF CLAIMS OF OHIO

MARLENE D. CLAPPER	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02543-AD
OHIO REFORMATORY FOR WOMEN	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Marlene D. Clapper, an inmate incarcerated at defendant, Ohio Reformatory for Women, alleged her personal property was confiscated on December 4, 2002 during a shakedown search at defendant's institution. Plaintiff further alleged the confiscated property was subsequently, either lost or destroyed.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$82.55, the estimated value of her alleged confiscated property which included an AIWA brand walkman and two pairs of pajamas.

{¶3} 3) Defendant submitted evidence indicating plaintiff reported her walkman and pajamas were stolen on or about December 2, 2002. A theft/loss report was filed on January 24, 2003, the day plaintiff reported the theft. According to the theft/loss report, plaintiff apparently left her property unsecured on her bed area and the items were stolen. No mention was made of property confiscation incident to a December 4, 2002 shakedown search. Defendant's employee conducted a fruitless search after being informed of the theft. Defendant contended it was not responsible for the loss of plaintiff's property. Defendant did not submit any record regarding property confiscation on

December 4, 2002.

{¶4} 4) On August 21, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted her property items were confiscated on December 4, 2002 during a shakedown search. Plaintiff asserted she reported the theft of her property on December 5, 2002. Plaintiff further asserted she was required to leave her property unsecured during the shakedown operation.

CONCLUSIONS OF LAW

{¶5} 1) Although not strictly responsible for a prisoner's property, defendant had at least a 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 she 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) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶9} 5) Plaintiff's failure to prove delivery of her property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or destroyed or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶10} 6) The allegation that a theft may have occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶11} 7) 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.

{¶12} 8) Plaintiff has failed to prove, by a preponderance of the evidence, her 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.

{¶13} 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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RDK/laa
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