

[Cite as *Black v. Richland Correctional Inst.*, 2003-Ohio-5552.]

IN THE COURT OF CLAIMS OF OHIO

WILLIAM H. BLACK	:	
Plaintiff	:	
v.	:	CASE NO. 2003-05798-AD
RICHLAND CORRECTIONAL INST.	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

: : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) On March 17, 2003, plaintiff, William H. Black, an inmate incarcerated at defendant, Richland Correctional Institution, suffered property loss when his tape player, cassette tapes, headphones, and boots were stolen. The stolen property items were left unsecured, stored around his bed area.

{¶2} 2) Defendant's personnel conducted a prompt, but fruitless search after being informed of the theft.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$301.50, the estimated value of the stolen property. Plaintiff submitted the filing fee on July 17, 2003. Defendant asserted plaintiff has overvalued the stolen property items.

{¶4} 4) Defendant denied any liability in this matter.

{¶5} 5) On July 30, 2003, plaintiff submitted a response to the investigation report. Plaintiff again stated his property was lost as the result of a theft.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 2) 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.

{¶8} 3) 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.

{¶9} 4) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶10} 5) The mere fact that a theft occurred is insufficient to show defendant’s negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶11} 6) 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} 7) 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.

{¶13} 8) 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, to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶14} 9) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen or lost as a proximate result of any negligence on the part of

defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶15} 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

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