

[Cite as Hill v. Grafton Correctional Inst., 2003-Ohio-590.]

IN THE COURT OF CLAIMS OF OHIO

EARL HILL, #209-956	:	
2500 S. Avon-Belden Road	:	
Grafton, Ohio 44044	:	Case No. 2002-07622-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
GRAFTON CORRECTIONAL	:	
INSTITUTION	:	
Defendant	:	

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

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

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FINDINGS OF FACT

{¶1} 1) On or about May 15, 2002, employees of defendant, Grafton Correctional Institution, confiscated coffee, laundry detergent and peppers from the possession of plaintiff, Earl Hill, an inmate. The coffee, detergent and peppers were confiscated because these articles were not stored in their original packages and constituted contraband property. The articles as possessed were in violation of defendant's administrative regulations; specifically Administrative Rule 5120-9-55 which prohibits possession of items "in an altered form or condition."

{¶2} 2) The confiscated articles were subsequently destroyed by defendant. Defendant asserted plaintiff was given an option to either mail these items out of the institution or authorize the

destruction of the confiscated items.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$7.26, the estimated value of the destroyed contraband.

{¶4} 4) Defendant maintained regulations were followed in seizing the articles from plaintiff and subsequently disposing of the items.

{¶5} 5) Plaintiff filed a response. Plaintiff asserted defendant arbitrarily enforces internal regulations. Plaintiff admitted the items confiscated from his possession were not stored in original containers. Plaintiff implied he authorized the destruction of the confiscated items.

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 property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶7} 2) 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.

{¶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) 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.

{¶10} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss which was the

proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶11} 6) By authorizing the destruction of his property declared contraband and failing to take any subsequent positive action to negate this authorization, plaintiff, in effect, relinquished any property right he maintained in the contraband articles. *Johnson v. Southern Ohio Correctional Facility* (2000), 2000-07846-AD jud.

{¶12} 7) By refusing to authorize the mailing of the contraband items, plaintiff, in effect, abandoned the confiscated contraband and voluntarily relinquished any right of ownership. *Hutton v. Mansfield Correctional Inst.* (2001), 2001-04727-AD.

{¶13} 8) Plaintiff has no right to assert a claim for property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

{¶14} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶17} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk