

[Cite as *Bialecki v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-591.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH BIALECKI, #392-342 :
P.O. Box 1812 :
Marion, Ohio 43301 : Case No. 2002-07941-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION :

Defendant :

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

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

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

FINDINGS OF FACT

{¶1} 1) On or about July 29, 2002, employees of defendant's North Central Correctional Institution conducted a shakedown search of the institution.

{¶2} 2) Plaintiff, Joseph Bialecki, an inmate incarcerated at defendant's North Central Correctional Institution, has alleged his headphones were damaged during the shakedown search.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$27.47, the total cost of replacement headphones, plus \$25.00 for filing fee reimbursement.

{¶4} 4) Defendant has denied any liability in this matter. Defendant denied any of its personnel damaged plaintiff's

headphones during a July 29, 2002 shakedown search. Defendant disputed any assertion that the headphones were totally damaged or destroyed. Defendant maintained plaintiff's headphones exhibited a small dent in the wire. However, the wire was not cut or bent. Defendant related plaintiff did not offer any evidence to indicate the headphones were not functional.

CONCLUSIONS OF LAW

{¶5} 1) It has been determined by this court that when a defendant engages in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶6} 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.

{¶7} 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.

{¶8} 4) Plaintiff has failed to prove a causal connection between the damage to his headphones and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Institution* (1998), 97-11819-AD.

{¶9} 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.

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

{¶11} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶13} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
1/15
Filed 1/22/03
Jr. Vol. 731, Pg. 30
Sent to S.C. reporter 2/7/03