

amount of \$158.00. However, defendant denied any other property items belonging to plaintiff were lost while under the control of SOCF staff. Defendant has no record of ever receiving delivery of a cassette player and set of headphones. Defendant asserted plaintiff's gym shoes and cassette tapes were forwarded to OSP. Additionally, evidence has shown plaintiff's sweat suit, one bar of soap, and one deodorant stick were transferred to OSP. Plaintiff's property inventory compiled at SOCF on January 20, 2002 does not list any tobacco products, tuna, additional deodorant sticks, or additional bars of soap. "Legal work" is listed among the packed property on the January 20, 2002 inventory. No legal material is listed being received at OSP, but letters and papers are included among the property forwarded to OSP.

{¶5} 5) On September 29, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted defendant should be held liable for the value of all articles claimed. Plaintiff contended that regardless of the fact SOCF personnel never received delivery of certain items of property, defendant should still bear liability for the loss of these items.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 2) 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} 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.

{¶9} 4) 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 part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation*

and Correction (1987), 86-02821-AD.

{¶10} 5) Plaintiff has failed to prove, by a preponderance of the evidence, additional 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.

{¶11} 6) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's television set. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶12} 7) The court finds defendant liable to plaintiff in the amount of \$158.00, 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.

{¶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 plaintiff in the amount of \$183.00, 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:

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