

[Cite as *Spitza v. Allen Correctional Inst.*, 2003-Ohio-6430.]

IN THE COURT OF CLAIMS OF OHIO

EMERY J. SPITZA :

Plaintiff :

V. :

CASE NO. 2003-07715-AD

ALLEN CORRECTIONAL INST. :

MEMORANDUM DECISION

Defendant :

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FINDINGS OF FACT

¶1 1) Plaintiff, Emery J. Spitz, an inmate incarcerated at defendant, Allen Correctional Institution, has alleged that on April 4, 2003, his television set was broken when it was accidentally dropped by defendant's employee.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$157.00, the total replacement cost of his television set.

{¶3} 3) Defendant denied any of its employees dropped plaintiff's television set. Defendant asserted plaintiff has failed to produce any evidence to prove his television set was damaged while being handled by defendant's personnel.

CONCLUSIONS OF LAW

{¶4} 1) This court in *Mullett v. Ohio Dept. of Rehab. & Corr.* (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 of using the same degree of care as it would use with its own property.

{¶5} 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.

{¶6} 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 Univ.* (1977), 76-0368-AD.

{¶7} 4) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss as a result of any negligence on the part of defendant. *Fitzgerald v. Dept. of Rehab. & Corr.* (1998), 97-10146-AD.

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

{¶9} 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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