

[Cite as *Mitchell v. Richland Correctional Inst.*, 2003-Ohio-6591.]

IN THE COURT OF CLAIMS OF OHIO

IVAN MITCHELL	:	
Plaintiff	:	
v.	:	CASE NO. 2003-06077-AD
RICHLAND CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) Plaintiff, Ivan Mitchell, an inmate incarcerated at defendant, Richland Correctional Institution (RiCI), has alleged several items of his personal property were lost when he was transferred from RiCI to the North Central Correctional Institution on April 27, 2001.

{¶2} 2) Plaintiff asserted his religious books and other property items were lost while under the control of RiCI staff. The other property items included personal hygiene articles, foodstuffs, and writing material. Plaintiff originally claimed damages in the amount of \$279.60 representing claims of \$226.66, the total replacement cost of the religious books, \$26.94, the replacement value for the other property items, and \$25.00 for filing fee reimbursement. Subsequently, plaintiff claimed the replacement value of the other property items totaled \$39.30.

{¶3} 3) Defendant admitted liability for the loss of plaintiff's books. Defendant acknowledged plaintiff suffered damages in the amount of \$226.66 for the books, plus \$25.00 for filing fees. Defendant denied liability for the loss of any other property.

{¶4} 4) On October 3, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted all property claimed was lost while under defendant's

control. Plaintiff has failed to supply sufficient evidence to show any of his personal hygiene articles, foodstuffs, or other property excluding his books were lost while under defendant's control.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 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.

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

{¶9} 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.

{¶10} 6) The court finds defendant liable to plaintiff in the amount of \$226.66, 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.

{¶11} 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 \$251.66, 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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11/6
Filed 11/26/03
Sent to S.C. reporter 12/9/03