

[Cite as *Stewart v. Pickaway Correctional Inst.*, 2003-Ohio-6592.]

IN THE COURT OF CLAIMS OF OHIO

LAWRENCE E. STEWART

:

Plaintiff

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□

V.

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CASE NO. 2003-06450-AD

PICKAWAY CORRECTIONAL
INSTITUTION

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MEMORANDUM DECISION

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Defendant

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FINDINGS OF FACT

{¶1} 1) On March 23, 2003, plaintiff, Lawrence E. Stewart, an inmate incarcerated at defendant, Pickaway Correctional Institution, was transferred to a segregation unit.

{¶2} 2) Plaintiff's personal property was inventoried, packed, and delivered into defendant's custody incident to this transfer.

{¶3} 3) Plaintiff has alleged several items of his property were either stolen or damaged while under defendant's control. Plaintiff related the following items with corresponding values were either stolen or damaged: J.V.C. headphones-\$38.95, t.v. cable and splitter box-\$17.74, a pair of gym shoes-\$75.00, four cassette tapes-\$39.98, two t.v. antennas-\$20.30, assorted commissary items-\$48.00, a denture brush-\$3.75, three pairs of undershorts-\$19.00, three t-shirts-\$19.00, two wash cloths-\$10.00, two packs of batteries-\$5.40, a deodorant-\$2.00, twelve cans of soda pop-\$4.20, two tortilla shell wraps-\$3.70, two cans of chilli-\$2.00, eight pouches of tobacco-\$7.20, two bars of soap-\$1.60, a law book-\$10.00, two catalogs-\$15.00, two pairs of socks-\$14.00, one container of coffee-\$5.05, eight granola bars-\$2.00, and a walkman-\$38.00. Plaintiff filed this complaint

seeking to recover \$380.87, the estimated total value of all the alleged stolen or damaged property items.

{¶4} 4) Defendant admitted liability for the loss of plaintiff's gym shoes, cassette tapes, walkman, commissary items undershorts, t-shirts, soda pop, one tortilla, one chilli, tobacco, deodorant, denture brush, soap, coffee, batteries, and socks. Defendant denied plaintiff's J.V.C. headphones, t.v. cable and splitter, antennas, wash cloths, law book, catalogs, and granola bars were stolen or damaged while under its control. Defendant has asserted plaintiff failed to prove these additional items were stolen or damaged as a result of any negligence on the part of defendant.

{¶5} 5) On October 21, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff raises unrelated issues not relevant to the case at bar. If plaintiff wishes to proceed on these unrelated issues he must file another form complaint.

CONCLUSIONS OF LAW

{¶6} 1) 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} 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.

{¶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) Negligence on the part of defendant has been shown in respect to the loss of all property subject to defendant's admission. *Baisden v. Southern Ohio*

Correctional Facility (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶11} 6) 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.

{¶12} 7) Defendant is liable to plaintiff in the amount of \$285.03, 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 \$310.03, 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:

Lawrence E. Stewart, #A328-065 P.O. Box 209 Orient, Ohio 43146	Plaintiff, Pro se
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Gregory C. Trout, Chief Counsel Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, Ohio 43229	For Defendant
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