

[Cite as *Wallace v. Oakwood Correctional Facility*, 2003-Ohio-6595.]

IN THE COURT OF CLAIMS OF OHIO

RONALD LEE WALLACE :

Plaintiff :

v. :

CASE NO. 2003-07511-AD

OAKWOOD CORRECTIONAL FACILITY :

MEMORANDUM
DECISION

Defendant :

: : : : : : : : : : :

{¶1} On or about September 17, 2002, plaintiff, Ronald L. Wallace, an inmate incarcerated at defendant, Oakwood Correctional Facility (OCF), delivered his dental crown to Shirley Zimmerman, R.N., an employee at defendant's facility. According to plaintiff, his dental crown had loosened and was re-cemented on September 14, 2002. However, the re-cemented crown had again loosened and detached by September 17, 2002. After receiving delivery of the dental crown, Shirley Zimmerman placed the crown in a clear plastic bag and taped the bag to the medication room door inside the secured nurse's station at defendant's facility. Plaintiff was scheduled to see the institution dentist on January 3, 2003 to have his dental crown re-cemented, but plaintiff missed this appointment. Plaintiff stated he had another dental appointment scheduled for February, 2003 and went to defendant's nursing station to retrieve his dental crown. When plaintiff arrived at defendant's nursing station, he was informed the crown was missing. The missing dental crown was never recovered.

{¶2} In another matter, plaintiff asserted his sociology book, two lighters, cassette tape, and two t-shirts were lost sometime after being stored in defendant's property room. Plaintiff related he was transferred from defendant, OCF to the Grafton Correctional

Institution. Plaintiff insisted his book, lighters, cassette tape and t-shirts were not among his packed property transferred to Grafton Correctional Institution. Plaintiff contended these items were probably lost while held in storage at defendant's facility.

{¶3} Plaintiff has maintained defendant is responsible for his property loss. Consequently, plaintiff filed this complaint seeking to recover \$600.00, the cost of a replacement dental crown, plus \$50.56, the total estimated value of the alleged lost book, lighters, cassette tapes, and t-shirts. Plaintiff filed the filing fee with the complaint. Plaintiff submitted a written statement from his mother, Carol Wallace, who asserted she paid \$600.00 in 1995 for plaintiff's dental crown. Carol Wallace explained she paid requisite fees to a dentist identified as Dr. Mark T. Zehler to perform the dental crown work for plaintiff.

{¶4} Defendant seemingly acknowledged its nursing staff accepted delivery of a dental crown or filling from plaintiff on or about September 17, 2002. However, defendant denied it "officially took possession of whatever" plaintiff gave the nurses. Additionally, defendant implied plaintiff was solely responsible for the loss of his dental crown since he should have retained possession of the crown up to the time he was scheduled to see the institution dentist. Furthermore, defendant has argued plaintiff did not supply sufficient evidence to prove he or his family member actually paid for the dental crown. Although defendant acknowledged dental work for inmates during 1995-1996 was provided by Dr. Mark Zehler, according to defendant, inmates did not pay for this dental service. Defendant has asserted plaintiff has failed to show he suffered any loss as a result of any breach of a duty of care owed to him in regard to his property.

{¶5} Plaintiff insisted he owned a gold dental crown, valued at \$600.00, which was lost while under the care of defendant's employee. Plaintiff also insisted the gold dental crown was paid for by his mother and was not provided to him free of charge by defendant. Plaintiff asserted no institution, under the authority of the Department of Rehabilitation and Correction, pays for dental crowns. Plaintiff submitted a copy of a dental bill from Dr. Mark T. Zehler, that clearly shows plaintiff was provided with dental crowns on two occasions, November 8, 1995 and May 13, 1996. These dental crowns and associated services were paid for by plaintiff's mother, Carol Wallace. Plaintiff submitted a copy of a check drafted

by his mother naming Dr. Zehler payee. This check, drafted October 9, 1995, for \$660.00, is represented as payment for a “cap on tooth.” Plaintiff’s evidence establishes his gold dental crown was paid for by a family member and was not provided free of charge by defendant.

{¶6} Defendant denied any additional property items belonging to plaintiff were lost while under the custody of OCF staff. Defendant denied ever packing or receiving delivery of plaintiff’s sociology book. Defendant suggested plaintiff voluntarily discarded the book before any of his property was placed in storage. Additionally, defendant denied ever packing or receiving delivery of any lighters from plaintiff. Defendant acknowledged plaintiff possessed eight cassette tapes when he was admitted to OCF. When plaintiff left the facility he possessed six cassette tapes. Defendant proposed that plaintiff threw away two cassette tapes. Furthermore, defendant denied any of plaintiff’s t-shirts were lost. Defendant asserted plaintiff was admitted to OCF with six t-shirts in his possession and left OCF with six t-shirts in his possession.

{¶7} In a response filed by plaintiff, he denied he ever threw away any of his personal property. Plaintiff maintained his books, lighters, t-shirts, and cassette tapes were lost or stolen while under the care of OCF staff.

{¶8} After reviewing all the evidence, the court concludes plaintiff and defendant entered into a bailor-bailee relationship in respect to the receipt of plaintiff’s gold dental crown. The court has previously held that in order to create a bailment there must be: 1) delivery of the personal property to the bailee, 2) acceptance of the property by the bailee, and 3) the intended return of the property to the bailor upon termination of the bailment. *Green v. Ohio State Univ. Hospital* (1982), 82-01367. The OCF nursing staff by accepting plaintiff’s dental crown created a bailment relationship in which a duty of ordinary care was owed to plaintiff regarding the bailed property. *Gray v. Department of Rehabilitation and Correction* (1985), 84-01577-ADjud.

{¶9} Furthermore, the bailment in the instant case took on the guise of a mutual benefit bailment since the defendant was furthering its goal of enforcing the rules and security of the institution. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD. In a mutual benefit bailment, the bailee is required to exercise the duty of

ordinary care toward the bailor's property. Ordinary care has been defined as that care which the reasonable man of ordinary prudence would exercise in light of the magnitude of the risk of harm created, the utility of the actor's conduct, and all the surrounding circumstances.

{¶10} Although the court recognized a bailment duty in the instant claim, the plaintiff must demonstrate that the defendant failed to discharge its duty while in custody of the property. Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. Negligence on the part of defendant has been shown in respect to the loss of plaintiff's dental crown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶11} Plaintiff's failure to prove delivery of certain additional 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. Plaintiff has failed to prove, by a preponderance of the evidence, additional property (t-shirts, cassette tapes, lighters, books) were 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. The court finds defendant liable to plaintiff in the amount of \$600.00, 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.

{¶12} 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 \$625.00, 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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