

[Cite as *Vantilburg v. Pickaway Correctional Inst.*, 2003-Ohio-7128.]

IN THE COURT OF CLAIMS OF OHIO

JASON E. VANTILBURG :

Plaintiff :

V. :

CASE NO. 2003-07049-AD

PICKAWAY CORR. INST. :

MEMORANDUM DECISION

Defendant :

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FINDINGS OF FACT

{¶1} 1) On January 9, 2003, plaintiff, Jason E. Vantilburg, an inmate incarcerated at defendant, Pickaway Correctional Institution, was transferred to an isolation unit.

{¶2} 2) Incident to plaintiff's transfer his personal property was inventoried, packed, and delivered into defendant's custody.

{¶3} 3) Plaintiff has asserted his cassette tapes, photo albums, Bibles, cosmetic bag, blanket, shorts, and various commissary items were damaged while under defendant's control. Plaintiff also asserted his sweat pants, radio, headphones, and shoes were lost while under defendant's control. Plaintiff filed this complaint seeking to recover \$649.00, the estimated value of his alleged damages and missing property. On August 18, 2003, plaintiff submitted the filing fee.

{¶4} 4) Defendant admitted liability for the damage to plaintiff's cassette tapes, photo albums, Bibles, cosmetic bag, blanket, shorts, and commissary items. Defendant assessed plaintiff's damages for these articles at \$316.15. Defendant denied ever receiving delivery of sweat pants, shoes, headphones, a radio, and additional commissary items. Defendant denied any liability for any damage or loss regarding this property.

{¶5} 5) On October 30, 2003, plaintiff submitted a response to defendant's investigation report. However, plaintiff did not produce any evidence to show defendant received delivery of a radio, headphones, shoes, sweat pants, or additional commissary 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) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's tapes, albums, Bibles, bag, blanket, shorts and commissary. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶11} 6) The court finds defendant liable to plaintiff in the amount of \$316.15, 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 \$341.15, 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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DRB/RDK/laa
11/24
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