

radio/cassette player and television were being transported in a vehicle and the property items fell when the transporting vehicle hit a bump in the road. Plaintiff maintained the radio/cassette player and television set were damages beyond repair. Plaintiff claimed damages in the amount of \$170.00 for his television set and \$45.00 for his radio. Plaintiff explained the volume control on the television set was broken and the cassette door on his radio/cassette player was broken.

{¶4} 4) Defendant denied damaging plaintiff's radio. Defendant contended plaintiff has not produced sufficient evidence to prove his radio was damaged during transfer from GCI to RCI. Defendant acknowledged the volume control on plaintiff's television was damaged during transport from GCI to RCI. Defendant disputed plaintiff's damage claim.

{¶5} 5) On October 23, 2003, plaintiff submitted a response to defendant's investigation report concerning all property plaintiff contends was lost or damaged due to defendant's negligence. Plaintiff insisted his television set and radio/cassette player were damages while under defendant's control. Plaintiff did not provide sufficient evidence to prove his radio/cassette player was damaged during transport. Plaintiff has not provided any evidence to prove the damage amount claimed for his television set.

{¶6} 6) In yet another unrelated matter, plaintiff related several articles of his personal property were stolen on August 23, 2002. Plaintiff asserted his property was packed by RCI personnel, but his envelopes, soap, nail clippers, tweezers, and three books were stolen around the time his property was packed. Plaintiff contended his alleged stolen property was valued at \$65.85.

{¶7} 7) Defendant denied any liability for the loss of any of plaintiff's property on or about August 23, 2002. Defendant did not pack tweezers, nail clippers, soap, envelopes, and the three books listed in plaintiff's complaint. Defendant denied any knowledge regarding the disposition of the alleged stolen property.

{¶8} 8) Plaintiff argued his envelopes, soap, tweezers, nail clippers, and books were stolen due to defendant's delay in packing his property. Plaintiff implied his property was stolen because it was left unsecured for an extended period of time.

{¶9} 9) Plaintiff related his book was received by defendant on October 28, 2002 and subsequently lost. Plaintiff stated he purchased the book by mail order for \$25.00.

{¶10} 10) Defendant denied receiving a book for plaintiff through the mail.

{¶11} 11) Plaintiff related the book was mailed to him as a gift.

CONCLUSIONS OF LAW

{¶12} 1) 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.

{¶13} 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.

{¶14} 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.

{¶15} 4) Plaintiff has failed to prove, by a preponderance of the evidence, his radio/cassette player was damaged or his book was lost, or his tweezers, nail clippers, envelopes, soap, and books were stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶16} 5) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's cassette tapes and study guide and the damage to plaintiff's television set. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶17} 6) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239. Defendant is liable to plaintiff in the amount of \$75.00.

{¶18} 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 \$75.00. 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:

Earle Sheilds, #A243-665
P.O. Box 7010
Chillicothe, Ohio 45601

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

DRB/RDK/laa
11/24
Filed 12/9/03
Sent to S.C. reporter 12/29/03