

[Cite as *Shannon v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-7316.]

IN THE COURT OF CLAIMS OF OHIO

HENRY SHANNON :  
 :  
 Plaintiff :  
 :  
 v. : CASE NO. 2003-06387-AD  
 :  
 OHIO DEPT. REHABILITATION : MEMORANDUM DECISION  
 AND CORRECTION :  
 :  
 Defendant :  
 :  
 ::::::::::::::::::::

FINDINGS OF FACT

{¶1} 1) On March 26, 2003, plaintiff, Henry Shannon, an inmate incarcerated at defendant’s Belmont Correctional Institution (BeCI), was transferred from the institution’s general population to a segregation unit.

{¶2} 2) Plaintiff’s personal property was inventoried, packed and delivered into the custody of BeCI staff incident to the March 26, 2003 transfer.

{¶3} 3) On April 7, 2003, plaintiff regained possession of his personal property and discovered his adapter was not among his returned property items. Plaintiff claimed his adapter had been stored in his locked locker box prior to his transfer to the segregation unit.

{¶4} 4) Plaintiff asserted his adapter was lost or stolen while under the control of BeCI personnel. Consequently, plaintiff filed this complaint seeking to recover \$21.00, the replacement value of an adapter, plus \$25.00 for filing fee reimbursement. Plaintiff claimed additional damages which are noncompensable. The issue concerning noncompensable damages shall not be further addressed. Plaintiff submitted evidence showing he purchased an adapter on July 12, 2000 and had an adapter in his possession on February 12, 2003 when he transferred to BeCI. Plaintiff was issued a title on February 18, 2003 for an adapter.

{¶5} 5) Defendant denied any liability in this matter. Defendant contended plaintiff has failed to produce sufficient evidence to prove his adapter was lost or stolen while under the control of BeCI staff members. BeCI employee, Officer Brownfield, packed plaintiff's property on March 26, 2003. Brownfield did not recall packing an adapter. No adapter was listed on plaintiff's property inventory compiled when plaintiff was transferred to the segregation unit.

{¶6} 6) On November 3, 2003, plaintiff filed a response to defendant's investigation report. Attached to the response was a written statement from a fellow inmate, David D. Bridgeforth. Bridgeforth stated he saw a BeCI employee remove plaintiff's adapter from his locker box and place the adapter into a plastic trash bag. Bridgeforth further stated he saw the BeCI employee carrying the trash bag containing plaintiff's adapter. Bridgeforth related he witnessed these events concerning plaintiff's adapter on or about March 26, 2003.

#### CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 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.

{¶11} 5) Negligence on the part of defendant has been shown in respect to the loss of the property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶12} 6) Defendant is liable to plaintiff in the amount of \$21.00, 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.

{¶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 \$46.00, 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:

Henry Shannon, #216-949  
68518 Bannock Road SR 331  
P.O. Box 540  
St. Clairsville, Ohio 43950

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  
12/11  
Filed 12/30/03  
Sent to S.C. reporter 1/9/04