

IN THE COURT OF CLAIMS OF OHIO

KENNETH LEONARD, SR., #308-639 :
P.O. Box 1812
Marion, Ohio 43301-1812 : Case No. 2002-07827-AD

Plaintiff : MEMORANDUM DECISION

v. :

NORTH CENTRAL CORRECTIONAL :
INSTITUTION :

Defendant :

: : : : : : : : : : : : : : :

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

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Kenneth R. Leonard, Sr., an inmate incarcerated at defendant, North Central Correctional Institution, has alleged his headphones were damaged beyond repair during a shakedown search at defendant's institution on July 29, 2002.

{¶2} 2) Consequently, plaintiff filed this complaint seeking to recover \$50.00, the total replacement cost of a new set of headphones, plus \$25.00 for filing fee reimbursement.

{¶3} 3) On July 30, 2002, plaintiff filed an informal complaint with defendant regarding his broken headphones. Upon investigating plaintiff's complaint, defendant's employee, Sgt. Wilson examined plaintiff's headphones and surmised the property was probably damaged during the July 29, 2002 shakedown operation.

Defendant characterized Sgt. Wilson's evaluation as an assumption.

{¶4} 4) On August 6, 2002, plaintiff filed a grievance concerning his damaged headphones. Defendant responded to this grievance by noting insufficient evidence was presented to establish the headphones were broken by defendant's personnel incident to the July 29, 2002 shakedown.

{¶5} 5) Defendant denied any liability in this matter. Defendant has contended plaintiff failed to provide enough evidence to prove his headphones were damaged by defendant's staff on July 29, 2002. Additionally, defendant has disputed plaintiff's damage claim as excessive. Plaintiff had possessed the headphones for over three years prior to the July 29, 2002 shakedown search.

{¶6} 6) Plaintiff filed a response. Plaintiff insisted his headphones were damaged by defendant's employees during the July 29, 2002 shakedown search. Plaintiff acknowledged his headphones were not new, but he maintained the value of the headphones as listed in his complaint was a valid estimate. Plaintiff reasoned if his headphones had been broken prior to July 29, 2002, the property would have been confiscated and he would have been cited for possession of contraband. Plaintiff submitted a statement from a fellow inmate, Ronald Steckley, who related plaintiff's headphones were working before the shakedown search and broken afterwards. Neither plaintiff nor Steckley witnessed plaintiff's headphones being handled by defendant's personnel on July 29, 2002.

CONCLUSIONS OF LAW

{¶7} 1) It has been determined by this court that when a defendant engaged in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶8} 2) 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.

{¶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 has failed to prove a causal connection between the damage to his headphones and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Institution* (1998), 97-11819-AD.

{¶11} 5) 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.

{¶12} 6) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶13} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶14} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶17} 2) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

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