

[Cite as *Amato v. Lorain Correctional Inst.*, 2003-Ohio-836.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL AMATO, #320-793	:	
2075 S. Avon Beldon Road	:	
Grafton, Ohio 44044	:	Case No. 2002-08238-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
LORAIN 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, Daniel Amato, an inmate incarcerated at defendant, Lorain Correctional Institution, asserted his personal property was packed by defendant's employees on or about November 9, 2001.

{¶2} 2) Plaintiff has alleged defendant's personnel failed to pack all his personal property. Plaintiff has further alleged the unpacked property was either lost or stolen. Plaintiff has claimed the following items are missing: a radio, a watch, a pair of gym shoes, two sweat suits, a belt, a set of headphones, and a beard trimmer. Plaintiff filed this complaint seeking to recover \$366.00, the estimated value of the alleged missing articles.

{¶3} 3) Defendant explained plaintiff was transferred to a

segregation unit on November 2, 2001 and released on November 14, 2001. However, defendant could not produce any documentation regarding what items of plaintiff's property, if any, were packed by defendant incident to plaintiff's transfer to the segregation unit. Defendant did supply copies of plaintiff's property inventories compiled on November 4, 2000 and October 5, 2001. Sweat pants and sweat shirts are listed on the October 5, 2001 inventory. No other property claimed as missing by plaintiff was listed on either the November 4, 2000 or October 5, 2001 inventory.

Plaintiff filed a theft report on April 25, 2002 relating his radio, watch, gym shoes, belt and other items were stolen at sometime during January, February, and March, 2002. Defendant has contended plaintiff has failed to produce evidence to establish any of his property was lost or stolen as a proximate cause of any negligence on the part of defendant's staff.

{¶4} 4) Plaintiff filed a response insisting his property was lost or stolen due to defendant's negligence in failing to pack his property in November, 2001. Plaintiff argued defendant's failure to produce a copy of his property inventory is sufficient proof to establish negligence on the part of defendant in regard to the alleged loss of plaintiff's property.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 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.

{¶8} 4) 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.

{¶9} 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.

{¶10} 6) Plaintiff's failure to prove delivery of certain property items to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

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

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

{¶13} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

1/15

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