

IN THE COURT OF CLAIMS OF OHIO

MIKE FESTI, #A279-057 :
P.O. Box 5500 :
Chillicothe, Ohio 45601-0990 : Case No. 2002-02655-AD

Plaintiff : MEMORANDUM DECISION

v. :

CHILLICOTHE 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) On or about January 24, 2002, personnel at the Chillicothe Correctional Institution (CCI) mailroom received a television set intended for plaintiff, Michael Festi, an inmate. According to plaintiff, the television set was mailed by his parents to CCI.

{¶2} 2) Plaintiff asserted that on January 24, 2002, he was notified by CCI mailroom personnel his television set was damaged. Plaintiff further asserted the television was damaged while under the custody and care of CCI mailroom staff.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$200.00, the estimated total replacement value of the damaged television set. On April 23, 2002, plaintiff submitted the

filing fee.

{¶4} 4) Defendant denied any liability in this matter. Defendant explained plaintiff entered the Polaris program at CCI in 2000. While participating in the two-year Polaris program inmates are not permitted to retain personal television sets. Therefore, in April, 2000, plaintiff mailed his television set to his parent's home. In January 22, 2002, plaintiff was given permission to have the set returned to him at CCI. Apparently, the television set was shipped to CCI packed in the same box it had been mailed in during April 2000. Defendant contended when the box was opened upon receipt at the CCI mailroom, mailroom staff discovered the television set was broken. Defendant denied CCI staff were responsible for the damage to plaintiff's television set. Defendant contended the appliance was already damaged when it arrived at CCI. Defendant denied CCI mailroom personnel mishandled the box containing plaintiff's television set.

{¶5} 5) Plaintiff filed a response. Plaintiff stated his broken television set was held by defendant for a period of three months after the item was mailed to CCI. Plaintiff related requests were made for CCI personnel to hand the damaged set over to the United Parcel Service (UPS) to investigate the damage to the set. The United Parcel Service was the carrier who delivered the mailed television set to the CCI mailroom in January, 2002. Plaintiff asserted the television set was insured through UPS. However, plaintiff maintained all insurance coverage for his damaged set was voided when CCI staff refused to deliver the damaged property to UPS because the UPS agent did not bring a "call tag" for the set. The set was subsequently shipped back to plaintiff's parents through the United States Postal Service. Plaintiff has reasoned defendant is liable for any refusal by UPS to abide by insurance coverage, despite the failure by UPS personnel to follow proper procedure to recover the damaged television.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 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.

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

{¶10} 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.

{¶11} 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.

{¶12} 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.

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

{¶14} IT IS ORDERED THAT:

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

{¶16} 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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