

IN THE COURT OF CLAIMS OF OHIO

PETE THORNTON, #397-353 :
P.O. Box 540 :
St. Clairsville, Ohio 43950 : Case No. 2002-09170-AD

Plaintiff : MEMORANDUM DECISION

v. :

BELMONT 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 June 17, 2002, plaintiff, Pete Thornton, an inmate incarcerated at defendant, Belmont Correctional Institution, authorized the mailing of a pair of gym shoes to a company identified as ACCESS in St. Louis, Missouri. The shoes were delivered to defendant's mailroom staff and funds for postage were deducted from plaintiff's inmate account.

{¶2} 2) Plaintiff has asserted the shoes were never mailed to ACCESS. Plaintiff suggested the shoes were lost while in the custody of defendant's mailroom personnel.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$52.00 for property loss, \$6.45 for postage expenses, and \$25.00 for filing fee reimbursement. Plaintiff contended he

suffered these damages as a result of negligence on the part of defendant's employees in handling his shoes.

{¶4} 4) Defendant acknowledged plaintiff's shoes were received for mailing on June 17, 2002. However, defendant denied the shoes were not mailed and were lost while under the control of institution staff. Defendant asserted the shoes were mailed on June 19, 2002 with the United States Postal Service. Defendant's mail room log indicates the shoes were posted on June 19, 2002.

{¶5} 5) On January 5, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his shoes were lost while under defendant's control. Plaintiff contended defendant had a duty to purchase insurance when mailing his shoes.

Plaintiff asserted he was told by defendant the shoes would be insured. Plaintiff did not produce any evidence to establish the shoes were lost while under defendant's control. Plaintiff did not offer any evidence to indicate defendant promised to purchase insurance for the mailed property.

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) Defendant is not responsible for an item once it is shipped out of the facility. At the point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1990), 89-12968-AD.

{¶8} 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.

{¶9} 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.

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

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

{¶12} IT IS ORDERED THAT:

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

{¶14} 2) The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk