



{¶5} “5) Defendant admitted liability for the loss of plaintiff’s fan, earbuds, and two pairs of shorts. Defendant denied liability for the loss of any envelopes. Defendant did address the issue of damage to plaintiff’s television set noting the appliance was claimed as, “scratched upon return.” Defendant denied plaintiff reported any damage to his television set. Defendant has contended plaintiff has failed to produce sufficient evidence to establish his television set was damaged while under the care of TCI staff. Defendant asserted plaintiff did not prove he actually owned four envelopes.

{¶6} “6) On December 3, 2003, plaintiff filed a response to defendant’s investigation report. Plaintiff insisted his television set was damaged while under the control of TCI staff. Plaintiff did not offer any evidence to show his television set was damaged beyond repair. Plaintiff has not provided sufficient proof to establish his television set was damaged while under defendant’s control.

#### 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) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any damage to his television set as a result of any negligence on the part of

defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶13} 7) Negligence has been shown in respect to the loss of plaintiff's shorts, fan, earbuds, and envelopes. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD;

{¶14} 8) Defendant is liable to plaintiff in the amount of \$66.86, 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.

{¶15} 9) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239. Defendant is liable to plaintiff in the amount of \$91.86.

{¶16} 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 \$91.86, 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

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