

three dental crowns. The filing fee for this complaint was paid.

{¶5} 5) Defendant denied any liability in this matter. Defendant asserted plaintiff's property inventory compiled on October 26, 2002, "does not contain a reference to a false tooth or dental appliance." Defendant related plaintiff signed this property inventory acknowledging it as a complete and accurate inventory of his property. Defendant contended plaintiff has failed to prove his dental bridge was delivered to defendant and, subsequently, lost while under defendant's control.

{¶6} 6) On February 17, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff professed his October 26, 2002 property inventory reflects "5 cups" were packed. Plaintiff claims his dental bridge was stored inside one of the five cups. Plaintiff still did not demonstrate how the loss of a dental bridge created a dental need for three porcelain crowns.

CONCLUSIONS OF LAW

{¶7} 1) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61.

{¶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 the loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶10} 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.

{¶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) Plaintiff's failure to prove delivery of a dental bridge to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

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

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

{¶15} 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 defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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