

[Cite as *Mitchell v. London Correctional Facility*, 2004-Ohio-2615.]

IN THE COURT OF CLAIMS OF OHIO

GEORGE MITCHELL	:	
Plaintiff	:	
v.	:	CASE NO. 2003-10813-AD
LONDON CORRECTIONAL FACILITY	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

: : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) Plaintiff, George Mitchell, an inmate incarcerated at defendant, London Correctional Institution (LOCI), stated he delivered his wrist watch to LOCI personnel on August 29, 2003. Plaintiff maintained the watch was in good working order when he handed the property over to LOCI staff.

{¶2} 2) Plaintiff asserted that the watch was broken when it was returned to him on September 5, 2003. Plaintiff alleged the watch was broken while under defendant's control.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$60.00, the stated replacement cost of the watch, plus \$25.00 for filing fee reimbursement. Plaintiff paid a filing fee.

{¶4} 4) Defendant contended plaintiff's watch was already broken when he delivered the property to LOCI personnel on August 29, 2003. Defendant argued plaintiff has failed to produce evidence to show his watch was broken while under the custody and care of LOCI staff.

{¶5} 5) On January 5, 2004, plaintiff filed a response to defendant's

investigation report. Plaintiff insisted his watch was broken while under defendant's control and was not broken when he delivered the watch to LOCI personnel.

#### 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 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} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶12} 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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