

[Cite as *Dyson v. Lebanon Correctional Institution*, 2004-Ohio-5039.]

IN THE COURT OF CLAIMS OF OHIO

LARRY DYSON, JR. :

Plaintiff :

v. _____ : CASE NO. 2004-03381-AD

LEBANON CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION

Defendant

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Larry Dyson, Jr., an inmate incarcerated at defendant, Lebanon Correctional Institution (LeCI), related he purchased a yearly magazine subscription consisting of twelve monthly issues. Plaintiff paid \$29.97 for the magazine subscription. According to plaintiff, during 2003 he did not receive five monthly issues of the magazine he purchased. Plaintiff suggested his magazines were delivered to the LeCI mailroom and were subsequently lost while under the control of mailroom personnel.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$24.95, the newsstand price of the alleged undelivered magazines. Plaintiff paid the requisite material filing fee.

{¶ 3} 3) Defendant denied liability in this matter. Defendant contended plaintiff has failed to prove his five magazines were not forwarded to his possession by LeCI mailroom staff. Defendant did acknowledge three of plaintiff's magazines were withheld pursuant to rule 5120-9-19 of the Ohio Administrative Code.¹ Defendant stated plaintiff was notified presumedly on three

¹ Ohio Adm. Code: 5120-9-19(C) states in pertinent part:
“(C) Printed material is excludable if it is deemed to be detrimental to, or to pose a threat to the rehabilitation of inmates; the security of the institution; or, the good order or discipline of the institution.”

separate occasions that his magazines were subject to exclusion and consequently, withheld from his possession. Defendant further stated plaintiff was sent a Notice of Withholding form which contained option language whereby plaintiff was required to designate a choice to either have the magazines mailed from the institution or authorize the destruction of the printed material. Apparently, plaintiff did not designate any disposition option regarding the printed material and did not send a response to the LeCI mailroom. The three withheld magazines were destroyed by LeCI personnel. Defendant denied any additional magazines were not forwarded to plaintiff. Defendant denied any other magazines intended for plaintiff were destroyed.

{¶ 4} 4) On May 27, 2004, plaintiff filed a response to defendant's investigation report. Contrary to defendant's assertion, plaintiff denied he ever received a Notice of Withholding form regarding his magazines. Plaintiff implied he was never given an opportunity to make a choice concerning the disposition of his withheld magazines.

{¶ 5} CONCLUSIONS OF LAW

{¶ 6} 1) 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.

{¶ 7} 2) 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.

{¶ 8} 3) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶ 9} 4) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 10} 5) By refusing to authorize the mailing of the magazines, plaintiff in effect abandoned the withheld printed material and voluntarily relinquished any rights of ownership.

{¶ 11} 6) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. Plaintiff has failed to show defendant did not have the authority or right to destroy the property claimed.

LARRY J. DYSON :
Plaintiff :

v. : CASE NO. 2004-03381-AD

LEBANON CORRECTIONAL : ENTRY OF ADMINISTRATIVE
INSTITUTION : DETERMINATION

Defendant :
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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

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