

[Cite as *Stark v. Warren Correctional Institution*, 2004-Ohio-5043.]

IN THE COURT OF CLAIMS OF OHIO

KRISTOPHER STARK :
Plaintiff :
v. : CASE NO. 2004-03977-AD
WARREN CORRECTIONAL INST. : MEMORANDUM DECISION
Defendant :
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FINDINGS OF FACT

{¶ 1} 1) On or about September 26, 2003, plaintiff, Khristopher Stark, an inmate incarcerated at defendant, Warren Correctional Institution (WCI), was transferred from the institution's general population to a segregation unit. Plaintiff related before he was escorted to segregation he asked that his cell door be locked. Plaintiff stated he later returned from segregation to his cell to pack his property and discovered his cell door was opened and his television set was missing. Plaintiff maintained he was subsequently told, by an inmate identified as Little Red, that his television set was taken from his cell by his old cellmate, inmate Fitzgerald. According to the information supplied by Little Red, inmate Fitzgerald later returned the television set to plaintiff's cell. Plaintiff asserted the returned television set was then removed by WCI staff and stored in the WCI vault. However, plaintiff contended the television was lost or stolen while being stored in the WCI vault and he has, consequently, filed this complaint seeking to recover \$143.00, the total replacement cost of the set. The requisite material filing fee was paid.

{¶ 2} 2) Defendant denied ever exercising control over plaintiff's television set incident to his transfer on September 26, 2003. Defendant contended plaintiff failed to prove his television set was lost or stolen while under the care of WCI staff. Defendant submitted evidence showing

plaintiff was issued a title for a television set on February 18, 2003. However, property inventories compiled when plaintiff's property was packed on September 26, 2003, and November 2, 2003, do not reflect a television set was among the items packed. Defendant does not have any record of plaintiff's television set being confiscated from the possession of another inmate.

{¶ 3} 3) On September 27, 2003, or September 29, 2003, plaintiff filed a "Kite" with defendant in which he requested his television set be recovered from the possession of his former cellmate, Fitzgerald. The "Kite" contains a handwritten response signed "Sgt. Lee" and dated October 6, 2003. The response noted, "T.V. taken as contraband by second shift c/o and ex-cellie issued a ticket. T.V. in Major's vault." Defendant disputed the authenticity of this notation. Defendant did not submit any statement from anyone identified as Sgt. Lee concerning contact with plaintiff regarding a confiscated television set. Defendant has no record of a television being confiscated from inmate Fitzgerald. Defendant has no record of inmate Fitzgerald being charged with possession of contraband in connection with holding plaintiff's television set.

CONCLUSIONS OF LAW

{¶ 4} 1) 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.

{¶ 5} 2) Plaintiff's failure to prove delivery of the television set to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 6} 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.

{¶ 7} 4) Plaintiff has failed to prove, by a preponderance of the evidence, the television set was stolen or lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146.

KHRISTOPHER STARK	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03977-AD
WARREN CORRECTIONAL INST. :		<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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

Entry cc:

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RDK/laa
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