

tampering indicating thieves had gained access to the property stored inside. After plaintiff informed defendant about his missing property, a search was conducted. No property was recovered. Defendant stated plaintiff had his property for approximately fifteen minutes before he returned to report missing items to BeCI personnel.

{¶ 4} 4) On July 9, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his property items were removed from the bags while stored in the BeCI staff restroom. Plaintiff suggested his property could have been removed from the bags by defendant's personnel or inmate painters who had access to the restroom. Plaintiff related when his property was returned he was told to make a visual inventory and report any missing items. Plaintiff further related he tried to make a report concerning missing property within five minutes after his property had been returned.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 5) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a basis for only a guess, among different possibilities, 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.

{¶ 10}6) Plaintiff has failed to prove, by a preponderance of the evidence, his property 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-AD.

IN THE COURT OF CLAIMS OF OHIO

RICHARD WATERHOUSE :
Plaintiff :
v. : CASE NO. 2004-04884-AD
BELMONT CORRECTIONAL INST. : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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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DRB/RDK/laa
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