

[Cite as *Shope v. Dept. of Rehab. & Corr.*, 2004-Ohio-5411.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL W. SHOPE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-02032-AD
DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶ 1} On or about February 3, 2003, plaintiff, Daniel W. Shope, an inmate incarcerated at defendant’s Pickaway Correctional Institution (PCI), was transferred from PCI to a county jail in Ohio. Defendant asserted plaintiff was transferred to the Fayette County Jail. Plaintiff remained confined in jail until August 27, 2003, when he was transferred to the Correctional Reception Center. On September 23, 2003, plaintiff was again sent back to PCI.

{¶ 2} Plaintiff stated his personal property was packed by PCI employees and forwarded to the institution vault around the time he was transferred to a county jail. Plaintiff asserted that when he returned to PCI in September 2003, none of his property, which was supposed to have remained in storage in the institution vault, could be found.

{¶ 3} Plaintiff contended the following property items were lost or stolen while under the care of PCI personnel: a pair of gym shoes, a pair of boots, a pair of eyeglasses, a blanket, a wristwatch, a pair of slippers, a pair of shower shoes, a robe, 6 t-shirts, 6 pairs of undershorts, vitamins, a bowl, a mug, a padlock, a bottle of shampoo, protein mix, a deodorant, a bottle of conditioner, three hats, and assorted commissary items. Plaintiff filed this complaint seeking to recover \$608.89, the estimated replacement cost of the alleged missing property. Plaintiff contended

his property was lost or stolen as a proximate cause of negligence on the part of PCI staff in storing the items. The requisite material filing fee was paid.

{¶ 1} Defendant denied any liability in this matter. Defendant asserted plaintiff failed to produce sufficient evidence to prove his property was packed by PCI personnel and stored in the institution vault during the time he spent in Fayette County. Defendant argued plaintiff did not prove he owned any of the property items claimed in his complaint. Defendant has no record of plaintiff's property being inventoried or packed during February, 2003.

{¶ 2} Plaintiff insisted his property was packed by PCI staff and subsequently, was lost or stolen while under defendant's control. Plaintiff did not produce any evidence showing his property was packed and stored by defendant incident to a transfer in February, 2003. Plaintiff maintained he was transferred from PCI to the Montgomery County Jail not the Fayette County Jail in Washington Courthouse, Ohio.¹

{¶ 3} On September 9, 2004, defendant filed a reply to plaintiff's response.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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} 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.

{¶ 10} Plaintiff's failure to prove delivery of certain property to defendant constitutes a

¹ Plaintiff filed a response on August 31, 2004.

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.

{¶ 11} 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} 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. Anthill* (1964), 176 Ohio St. 61.

{¶ 13} 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.

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DANIEL W. SHOPE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-02032-AD
DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
	:	

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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