

[Cite as *Cisternino v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-5413.]

IN THE COURT OF CLAIMS OF OHIO

ANTHONY CISTERNINO :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-04388-AD
 :
 OHIO DEPT. OF REHABILITATION : MEMORANDUM DECISION
 AND CORRECTIONS :
 :
 Defendant :
 :
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FINDINGS OF FACT

{¶ 1} On or about August 22, 2003, plaintiff, Anthony Cisternino, an inmate, was transferred from the Ross Correctional Institution (RCI), to defendant’s Mansfield Correctional Institution (ManCI). All of plaintiff’s personal property items including his stereo receiver unit and tape deck unit were transferred along with him to ManCI.

{¶ 2} Plaintiff stated that when he arrived at ManCI, his stereo receiver unit and tape deck unit were confiscated by ManCI personnel. Plaintiff explained he was told the confiscated property items were impermissible. In response, plaintiff twice authorized the mailing of the confiscated items to defendant’s Chief Inspector for inspection and a decision on whether or not plaintiff could retain possession of the items at ManCI. Plaintiff implied he was ultimately not permitted to keep his stereo receiver and tape deck. These confiscated electronic appliances apparently remained under the custody of ManCI staff.

{¶ 3} Plaintiff filed this complaint asserting he should have been allowed to retain possession of his tape deck and stereo receiver. Plaintiff seeks damages in the amount of \$180.00 for the loss of the withheld electronic appliances, \$17.82 for mailing costs of the items to defendant’s inspector, and \$25.00 for filing fee reimbursement. The requisite material filing was paid.

{¶ 4} Defendant acknowledged a stereo receiver and tape deck were confiscated from plaintiff’s possession upon his arrival at ManCI. Defendant determined the stereo receiver and tape

deck were actually owned by RCI and were loaned to plaintiff while he was incarcerated at that institution. Defendant maintained these electronic devices should not have been transferred with plaintiff from RCI to ManCI. According to defendant, the confiscated stereo receiver and tape deck remain stored in the ManCI property vault. Furthermore, defendant contended plaintiff chose to mail the receiver and tape deck to the Chief Inspector and was not directed to mail the items. Plaintiff was issued a conduct report in connection with possession of the receiver and tape deck. The conduct report was heard and plaintiff was ordered to either authorize the mailing of the receiver and tape deck or have the items destroyed.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} Plaintiff has no right to pursue a claim for confiscated, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. The issue of ownership of property is determined by the trier of fact based on evidence presented.

{¶ 8} *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the confiscated property items were not owned by plaintiff. Therefore, plaintiff may not recover damages associated with the loss of property he did not own. See *Mumm v. Ohio Dept. of Rehab. and Corr., et al.* (2004), 2004-04574-AD.

{¶ 9} 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.

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OHIO DEPT. OF REHABILITATION :
AND CORRECTIONS :

ENTRY OF ADMINISTRATIVE
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

Entry cc:

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RDK/laa
9/8
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