

[Cite as *Zanders v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-7080.]

IN THE COURT OF CLAIMS OF OHIO

LAWRENCE ZANDERS	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03926-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On or about September 20, 2001, plaintiff, Lawrence Zanders, a former inmate incarcerated at defendant's Grafton Correctional Institution (GCI), delivered his personal back brace to the Capital Prosthetic & Orthotic Center, Inc. (Capital) in Columbus, Ohio. The back brace was to be refurbished by technicians at Capital and then forwarded to GCI when the refurbishing work was complete. Although the refurbished brace was to be sent to GCI, plaintiff was not permitted to possess the brace due to the fact it contained metal stays. Plaintiff was fitted with a replacement brace containing plastic stays. According to plaintiff, once his refurbished personal brace was returned from Capital it was to remain in storage at GCI until his release from institutional confinement. At the time of his scheduled release, the stored personal brace was to be returned to plaintiff's possession.

{¶2} 2) Plaintiff maintained his personal refurbished brace was sent from Capital to GCI at sometime in 2001. Plaintiff related his personal brace remained in storage at GCI and he made numerous requests to have the brace returned to him to use, but was refused. Plaintiff further related that, "[a]fter receiving parole, I contacted medical staff in

order to retrieve my personal back brace, so I could mail it home in advance of my leaving on January 14, 2004.” Plaintiff stated he was then told by GCI medical staff his back brace could not be located. The brace was never found at GCI. Consequently, plaintiff filed this complaint seeking to recover \$468.00, the total replacement value of his refurbished back brace, plus \$25.00 for filing fee reimbursement. Plaintiff contended his brace was lost as a proximate cause of negligence on the part of GCI personnel in exercising control over the property. The requisite material filing fee was paid.

{¶3} 3) Defendant has no record of plaintiff’s personal back brace being returned to GCI from Capital. Therefore, defendant denied ever receiving delivery of plaintiff’s back brace. Defendant denied plaintiff’s back brace was lost or misplaced while stored at GCI. Furthermore, defendant explained plaintiff received a replacement back brace. Defendant contended this replacement brace constituted in-kind restitution, thereby negating any damage claim plaintiff may pursue.

{¶4} 4) Plaintiff insisted his back brace was returned to GCI from Capital. Plaintiff asserted the returned back brace was subsequently lost while under the control of GCI staff. Plaintiff did not produce evidence to establish his back brace was forwarded from Capital to GCI.¹

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 3) Plaintiff must produce evidence which affords a reasonable basis for the

¹ Plaintiff filed a response on October 4, 2004.

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.

{¶8} 4) Plaintiff's failure to prove delivery of a back brace to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶9} 5) Plaintiff has failed to prove, by a preponderance of the evidence, his back brace was lost as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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LAWRENCE ZANDERS	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03926-AD
OHIO 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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RDK/laa
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