

[Cite as *Ross v. Mansfield Correctional Inst.*, 2004-Ohio-7086.]

IN THE COURT OF CLAIMS OF OHIO

JOHN E. ROSS	:	
Plaintiff	:	
v.	:	CASE NO. 2004-07719-AD
MANSFIELD CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) Plaintiff, John E. Ross, an inmate incarcerated at defendant, Mansfield Correctional Institution, asserted his television set, fan, and light bulbs were intentionally destroyed by his cellmate, Nickleberry on May 31, 2004. Additionally, plaintiff claimed his television cables, splitter, cassette tapes, tape cleaner, and nail clippers were stolen by inmate Nickleberry on May 31, 2004.

{¶2} 2) Plaintiff has contended defendant is responsible for his damaged and stolen property. Consequently, plaintiff filed this complaint seeking to recover \$280.49 for property loss. Plaintiff paid the requisite material filing fee.

{¶3} 3) Defendant denied any liability in this matter. Defendant asserted plaintiff did not produce any evidence to prove his property was stolen by inmate Nickleberry. Defendant explained inmate Nickleberry's property was examined and he did not have any of plaintiff's property in his possession. Furthermore, defendant

asserted it does not bear any responsibility for the destruction of plaintiff's property by a fellow inmate.

{¶4} 4) Plaintiff filed a response October 12, 2004. Plaintiff insisted defendant is responsible for all his property loss claimed.

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) Defendant is not responsible for acts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶7} 3) The mere fact that a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶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 reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, to any essential issue 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 the burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶11} 7) 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.

{¶12} 8) Plaintiff has failed to show any causal connection between the damage to his television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

IN THE COURT OF CLAIMS OF OHIO

JOHN E. ROSS	:	
Plaintiff	:	
v.	:	CASE NO. 2004-07719-AD
MANSFIELD CORRECTIONAL INSTITUTION	:	<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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For Defendant

RDK/laa
10/19
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