

[Cite as *Brocar v. Lebanon Correctional Inst.*, 2004-Ohio-899.]

IN THE COURT OF CLAIMS OF OHIO

RONALD W. BROCAR, JR. :
Plaintiff :
v. : CASE NO. 2003-09220-AD
LEBANON CORR. INST. : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On or about June 7, 2002, plaintiff, Ronald W. Brocar, Jr., an inmate incarcerated at defendant, Lebanon Correctional Institution (LeCI), was transferred to an isolation unit.

{¶2} 2) Plaintiff has asserted his gym shoes were stolen or lost while he was in isolation. Consequently, plaintiff filed this complaint seeking to recover \$145.00, the stated replacement cost of his gym shoes.

{¶3} 3) On July 10, 2002, plaintiff filed a theft/loss report with defendant's staff regarding the loss of his gym shoes.

{¶4} 4) Defendant denied any liability in this matter.

{¶5} 5) On November 6, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his shoes were lost or stolen while under the control of LeCI personnel. Plaintiff has not offered any evidence other than his own assertion to establish he owned a pair of gym shoes and the shoes were packed by LeCI employees.

CONCLUSIONS OF LAW

{¶6} 1) Although not strictly responsible for a prisoner's property, defendant

had at least a 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} 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.

{¶8} 3) 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} 4) Plaintiff's failure to prove delivery of shoes 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.

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

{¶11} 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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