

unreported, copy attached.

{¶6} “Because the plaintiff failed to allege or prove negligence on the part of defendant and because the evidence establishes that the defendant fulfilled its bailment duty with respect to the package, this complaint should be dismissed.”;

{¶7} 4) Defendant has presented evidence that plaintiff’s package was sent out of the institution on February 12, 2003;

{¶8} 5) Plaintiff has not responded to defendant’s motion to dismiss.

{¶9} THE COURT CONCLUDES THAT:

{¶10} 1) When prison authorities obtain possession of a package for an inmate, a bailment relationship arises between the correctional facility and the inmate. *Miller v. Dept. of Rehabilitation and Correction* (1985), 84-08661-AD; *Buhrow v. Ohio Dept. of Rehabilitation and Correction* (1985) 85-01562-AD; *Withrow v. Lima Correctional Facility* (1985), 85-02313-AD. By virtue of this relationship, prison authorities must exercise ordinary care in handling and storing the inmate’s property. *Buhrow* at 85-01562-AD; *Sperry v. Dept. of Rehabilitation and Corrections* (1985), 84-06757-AD; *Withrow*, at 85-02313-AD;

{¶11} 2) In order for plaintiff to recover on his claim he has the burden to show, 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. Plaintiff has shown that he incurred a loss, however, he has not presented evidence proving defendant was negligent, and that plaintiff’s loss was caused by defendant’s negligence;

{¶12} 3) The evidence shows that defendant shipped the package back to Addias, as plaintiff requested. Plaintiff has failed to show defendant was negligent. *Gierth v. Columbus Correctional Facility* (1981), 80-04750-AD. Defendant is not responsible for an item once it is shipped out of the facility. At that point it becomes the responsibility of the U.S. Postal Service to implement its own procedures for tracing lost packages. *Owens*

v. Department of Rehabilitation and Correction (1986), 85-08061-AD; *Perkins v. Ohio State Reformatory* (1987), 86-10743-AD;

{¶13} 4) Defendant is not the appropriate party to sue in this situation. Accordingly, plaintiff's case is dismissed.

{¶14} IT IS ORDERED THAT:

{¶15} 1) Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Furmen O. Pena, #324-605
P.O. Box 7010
Chillicothe, Ohio 45601

Plaintiff, Pro se

Stephen A. Young, Staff Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

DRB/laa
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