

[Cite as *Zalewski v. Southeastern Correctional Inst.*, 2004-Ohio-3487.]

IN THE COURT OF CLAIMS OF OHIO

DOUGLAS G. ZALEWSKI :
Plaintiff :
v. : CASE NO. 2003-11747-AD
SOUTHEASTERN CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
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FINDINGS OF FACT

{¶1} 1) On or about January 30, 2003, plaintiff, Douglas G. Zalewski, an inmate incarcerated at defendant, Southeastern Correctional Institution (SCI), was transferred from the institution's general population to an isolation unit.

{¶2} 2) Plaintiff's personal property was inventoried, packed, and delivered into the custody of SCI staff incident to the January 30, 2003, transfer.

{¶3} 3) On or about July 23, 2003, plaintiff was released from isolation and regained possession of his packed property items. Plaintiff claimed that when he examined his returned property he discovered several articles of clothing and other items were missing. Plaintiff asserted the following items were not returned: a pair of gloves, 2 pairs of shower shoes, four pairs of sweat pants, four sweatshirts, four pairs of gym shorts, seven pairs of socks, two towels, a washcloth, a set of thermal underwear, six

pairs of shorts, and six pairs of boxer shorts. Plaintiff contended his property was lost or stolen while under the care of SCI personnel between January 30, to July 23, 2003.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$309.00, the estimated replacement cost of his alleged missing property, plus \$25.00 for filing fee reimbursement. Plaintiff submitted a copy of a January 30, 2003, property inventory, compiled by SCI personnel at the time plaintiff was transferred to isolation. This inventory shows SCI employees packed a pair of gloves, seven pairs of socks, two pairs of gym shorts, two pairs of sweat pants, two sweatshirts, three towels, a washcloth, and a set of thermal underwear. No other property claimed by plaintiff was listed on the January 30, 2003, property inventory.

{¶5} 5) Defendant maintained all property packed on January 30, 2003, was subsequently returned to plaintiff. Defendant argued plaintiff failed to produce evidence establishing any of his property packed on January 30, 2003, was lost or stolen while under the care of SCI staff. Furthermore, defendant contended plaintiff failed to prove any additional property items were delivered to SCI personnel after the January 30, 2003, transfer. Plaintiff signed the January 30, 2003, inventory acknowledging all his property had been packed and the inventory was a complete listing of his property.

{¶6} 6) Plaintiff submitted a copy of a sundry package inventory listing the contents of a sundry package which was allegedly sent to SCI from a member of plaintiff's family. From a reading of the inventory, it appears the package was sent on October 7, 2002. The inventory also bears plaintiff's signature dated March 4, 2003, or May 4, 2003, the date plaintiff allegedly received the contents of the sundry package, sent five or seven months prior to receipt. The inventory does not bear a receipt

signature from any SCI employee or other representative of defendant. The inventory seemingly shows the following property items were contained in a sundry package intended for plaintiff: a pair of shower shoes, two sweatshirts, 2 pairs of sweat pants, two pairs of gym shorts, six undershirts, and six pairs of undershorts.

Plaintiff maintained the contents of this sundry package sent on October 7, 2002, were received by SCI at some time, remained in the SCI property room until March 4, 2003, and were then added to the plaintiff's property which was packed on January 30, 2003. Although, defendant's internal policy prohibits inmates from receiving clothing while in isolation, plaintiff asserted he did receive clothing while in isolation. Plaintiff explained the clothing was merely forwarded to defendant's property vault and combined with his other packed property.

{¶7} 7) On February 24, 2004, plaintiff filed a response to defendant's investigation report. Contrary to defendant's assertions that all property packed on January 30, 2003 was returned, plaintiff has insisted his clothing items were not returned. Plaintiff submitted a purported copy of his property inventory dated on July 22, 2003 and seemingly compiled after plaintiff was transferred from SCI to the Allen Correctional Institution. This inventory does not list many of the items packed on January 30, 2003. However, plaintiff signed the document certifying it as a complete and accurate inventory of his personal property.

CONCLUSIONS OF LAW

{¶8} 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.

{¶9} 2) 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.

{¶10} 3) 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.

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

{¶12} 5) 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.

{¶13} 6) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61.

{¶14} 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.

{¶15} 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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