

[Cite as *Beckham v. Lebanon Correctional Inst.*, 2005-Ohio-1246.]

IN THE COURT OF CLAIMS OF OHIO

DALE BECKHAM	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10311-AD
LEBANON CORRECTIONAL	:	<u>ENTRY OF DISMISSAL</u>
INSTITUTION	:	
Defendant	:	
: : : : : : : : : : : : : : : :		

{¶ 1} On November 18, 2004, plaintiff, Dale Beckham, filed a complaint against defendant, Lebanon Correctional Institution. Plaintiff alleges on or about June 8, 2004, he sent his walkman back to the manufacturer for repairs, however, the walkman was never returned. Plaintiff seeks damages in the amount of \$26.94, the cost of the walkman. On January 20, 2005, plaintiff submitted the filing fee.

{¶ 2} On December 28, 2005, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(6), failure to state a cause of action.

{¶ 3} In support of the motion to dismiss, defendant asserted that plaintiff has not alleged that defendant's agents acted negligently with respect to plaintiff's walkman.

{¶ 4} A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* (1992), 65 Ohio St. 3d 545. Dismissal is appropriate if all factual allegations of the complaint are presumed true and all reasonable inferences are made in favor of the non-moving party, it appears beyond doubt that the non-moving party can prove no set of facts entitling him to the relief requested. *O'Brien v. University*

*Community Tenants Union* (1975), 42 Ohio St. 2d 242.

{¶ 5} In the case at bar, plaintiff has presented no allegation of defendant's acts or omissions which caused the loss of his walkman. Accordingly, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall assess court costs against plaintiff. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Dale Beckham, #435-197  
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Lebanon, Ohio 45036

Plaintiff, Pro se

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For Defendant

DRB/laa  
2/7  
Filed 3/10/05  
Sent to S.C. reporter 3/18/05