

[Cite as *Gerhart v. Chillicothe Correctional Inst.*, 2005-Ohio-3970.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT S. GERHART :  
Plaintiff :  
v. : CASE NO. 2005-03831-AD  
CHILLICOTHE CORR. INSTITUTION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Robert S. Gerhart, a former inmate incarcerated at defendant, Chillicothe Correctional Institution ("CCI"), has alleged that at sometime between August 18, to August 20, 2004, his headphones, Panasonic radio, and compact discs were stolen from his cell while he was eating lunch. Plaintiff related he reported the property theft to CCI personnel.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$157.45, the estimated replacement cost for his alleged stolen property, plus \$25.00 for filing fee reimbursement. Plaintiff has asserted his property items were stolen as a proximate cause of negligence on the part of CCI staff in failing to monitor inmate living quarters and provide adequate security to limit theft attempts. The filing fee was paid.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant contended plaintiff possessed a locker box which could be secured to store his valuable property. Defendant suggested plaintiff's own negligence in choosing not to secure his property was the proximate cause of the loss claimed. Defendant denied the

property loss claimed was the result of any negligent act or omission on the part of CCI personnel.

{¶ 4} 4) Plaintiff filed a response insisting his property was stolen and defendant should bear liability for the total loss claimed.

#### CONCLUSIONS OF LAW

{¶ 5} 1) 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.

{¶ 6} 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.

{¶ 7} 3) The mere fact 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) Defendant is not responsible for actions of other 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.

{¶ 9} 5) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 10} 6) 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,

as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 11} 7) 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.

{¶ 12} 8) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

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ROBERT S. GERHART	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03831-AD
CHILLICOTHE CORR. INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : : :

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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/laa  
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