

2, 2004, administrative sweep of the institution. Apparently, the property items seized from plaintiff were among the property subject to the destruction order issued by the Common Pleas Court of Lucas County.

{¶ 4} 4) On December 10, 2001, plaintiff entered ToCI. A property inventory compiled at that time listed the following property items relevant to this claim: fifteen cassette tapes, a combination lock, a bottle of vitamin E pills, one mirror, and magazines which may or may not have consisted of the adult books referenced in plaintiff's complaint. Plaintiff submitted evidence showing he purchased eleven additional cassette tapes at various times between March 12, 2002 and December 8, 2003.

{¶ 5} 5) Defendant acknowledged an administrative sweep occurred at ToCI on March 2, 2004, and multiple items of personal property were confiscated as contraband from many members of the inmate population. Defendant further acknowledged property was confiscated from plaintiff's cell incident to the March 2, 2004, administrative sweep. Although it is uncertain what or how much identifiable property was confiscated from plaintiff's cell, defendant admitted cassette tapes, a vitamin pill bottle, a wire, and a combination lock were seized. Defendant specifically denied mirrors, adult books, baby oil, and a silverware set were confiscated from plaintiff's possession. Defendant admitted the property seized from plaintiff was mishandled and destroyed without proper authorization. Defendant admitted liability for the seized items in the amount of \$191.41. Defendant disputed plaintiff's valuation of his vitamins which he seemingly possessed since December 10, 2001. Defendant denied ever exercising control over mirrors, adult books, a silverware set, and baby oil. Plaintiff insisted defendant confiscated and improperly destroyed all property claimed. Plaintiff reasserted his entire property loss

amount to \$221.36.¹

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) 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.

{¶ 10} 5) 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 11} 6) Plaintiff's failure to prove delivery of certain items (mirrors, baby oil, adult books, silverware) to defendant

¹ Plaintiff filed a response.

assessed against defendant. 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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