

**[Cite as *Watley v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-4320.]**

IN THE COURT OF CLAIMS OF OHIO

RAYSHAN WATLEY	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2005-05183-AD
	:	
OHIO DEPARTMENT OF	:	<u>MEMORANDUM DECISION</u>
REHABILITATION AND CORRECTION	:	
	:	
Defendant	:	
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FINDINGS OF FACT

{¶ 1} 1) On February 8, 2005, employees of defendant’s Southern Ohio Correctional Facility (“SOCF”), confiscated several items of personal property from the possession of plaintiff, Rayshan Watley, an inmate. The confiscated items included: eleven bags of coffee, ten chilli soups, five boxes of snack cakes, thirteen batteries, four containers of tuna fish, one Velveeta cheese spread, one sandwich spread, one pickle, one pepperoni, and one bowl.

{¶ 2} 2) Plaintiff asserted SOCF staff had no right to confiscated property from his possession. Plaintiff explained the confiscated items were subsequently destroyed and he has filed this complaint seeking to recover the replacement cost of the destroyed property. Plaintiff was not required to pay a filing fee to prosecute this action.

{¶ 3} 3) Defendant acknowledged SOCF personnel conducted a shakedown search of plaintiff’s cell on February 8, 2005, and confiscated several commissary items along with other items “that had been impermissibly altered.” Defendant classified the confiscated commissary items as contraband due to the fact plaintiff had been placed on a commissary restriction prohibiting him from shopping at the SOCF commissary. Therefore, defendant

reasoned, any commissary items plaintiff possessed would have been obtained through illegitimate means and consequently, contraband. Furthermore, defendant related plaintiff was unable to provide any documents or receipts to establish he rightfully possessed the confiscated articles. Defendant contended plaintiff may not pursue a claim for the loss of property he cannot prove he actually owned.

{¶ 4} 4) In his response to defendant's investigation report, plaintiff maintained he purchased the confiscated property claimed from the SOCF commissary at sometime before September 1, 2004. Plaintiff alleged the property he purchased from the SOCF commissary was held in "long term storage" and then released to his possession. Plaintiff did not submit proper documentation to prove he rightfully owned the confiscated property. Despite the fact plaintiff did submit a copy of a "Supplemental Disposition of Grievance" dated November 30, 2004, which contains information plaintiff may have possessed coffee, soups, and a bowl set at sometime prior to November 18, 2004.

#### 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) Plaintiff has no right to pursue a claim for confiscated, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. The issue of ownership of property is determined by the trier of fact based on evidence presented.

*Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the confiscated property items were not owned by plaintiff. Therefore, plaintiff may not recover damages associated with the loss of property he did not own. See *Mumm v. Ohio Dept. of Rehab. and Corr., et al.*, 2004-04574-AD, 2004-Ohio-5134.

{¶ 8} 4) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

IN THE COURT OF CLAIMS OF OHIO

RAYSHAN WATLEY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05183-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
: : : : : : : : : : : : : :		

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:

Rayshan Watley, #347-921  
P.O. Box 45699  
Lucasville, Ohio 45699

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel  
Department of Rehabilitation  
and Correction  
1050 Freeway Drive North  
Columbus, Ohio 43229

For Defendant

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