

[Cite as *McCarroll v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-192.]

IN THE COURT OF CLAIMS OF OHIO

EZEKIEL MCCARROLL, JR. :  
Plaintiff :  
v. : CASE NO. 2005-05027-AD  
OHIO DEPT. OF REHABILITATION : MEMORANDUM DECISION  
AND CORRECTION :  
Defendant :  
: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On or about March 14, 2004, plaintiff, Ezekiel McCarroll, Jr., an inmate incarcerated at defendant's Ohio State Penitentiary ("OSP"), was transferred to a segregation unit for disciplinary reasons.

{¶ 2} 2) Incident to this transfer, plaintiff's personal property including his television set, was delivered into the custody and control of OSP personnel.

{¶ 3} 3) Plaintiff related he regained possession of his television on or about January 18, 2005, and discovered the set was broken. Specifically, plaintiff maintained the sound volume setting on the television was not working. Plaintiff has alleged his television set was broken while under the care of OSP staff and he therefore filed this complaint seeking to recover \$250.00 for property damage, plus \$25.00 for filing fee reimbursement. Plaintiff did not submit a filing fee.

{¶ 4} 4) Defendant denied plaintiff's television was damaged while under the control of OSP staff. Additionally, defendant has asserted plaintiff did not offer any evidence establishing the

amount of the damages claimed. Plaintiff's television set was purchased in 1998. Defendant acknowledged the volume setting on the television does not function. Defendant denied the television was broken while in storage at OSP.

{¶ 5} 5) In his response to defendant's investigation report, plaintiff insisted his television set was damaged while under the custody and control of OSP personnel. Plaintiff did not submit any evidence showing the precise amount of damages claimed.

#### 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) 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.



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