

[Cite as *Weisheit v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7176.]

IN THE COURT OF CLAIMS OF OHIO

JEFF WEISHEIT :
 :
 Plaintiff :
 :
 v. : CASE NO. 2005-10292-AD
 :
 OHIO DEPT. REHAB. AND CORR. : MEMORANDUM DECISION
 :
 Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On or about May 1, 2004, plaintiff, Jeff Weisheit, an inmate incarcerated at defendant's Warren Correctional Institution ("WCI"), was transferred from the institution's general population to a segregation unit. Incident to plaintiff's transfer, his personal property was inventoried, packed, and delivered into the custody of WCI staff. Plaintiff pointed out he was permitted to retain some of his clothing items during the time he was housed in the segregation unit.

{¶ 2} 2) On August 30, 2004, WCI personnel again inventoried plaintiff's stored property in preparation for his transfer to defendant's Trumbull Correctional Institution ("TCI"). On September 1, 2004, plaintiff and his property were transferred from WCI to TCI. An inventory of plaintiff's property was compiled upon his arrival at TCI and all inventoried items were returned to his possession.

{¶ 3} 3) Plaintiff asserted multiple property items which were packed and stored by WCI staff on May 1, 2004, were not

forwarded to TCI when he was transferred on September 1, 2004. Plaintiff contended his property was lost or stolen while under the control of WCI employees. Plaintiff maintained the following items are missing: one box of laundry soap, two pairs of sweat pants, two sweat shirts, one pair of boots, two thermal underwear tops, one thermal underwear bottom, one pair of shoes, one towel, a dental partial plate, four packs of cigarettes, and twenty boxes of cigars.

{¶ 4} 4) Plaintiff filed this complaint seeking to recover \$425.82, the estimated replacement value of his alleged missing property which plaintiff claims was lost or stolen as a result of negligence on the part of WCI personnel. Plaintiff also seeks reimbursement of the \$25.00 filing fee, plus \$8.18 for postage and copying costs. Postage and copying expenses are not recognizable damage elements in a claim of this type. Consequently, any claim for reimbursement of these costs is denied and shall not be further addressed. The filing fee was paid. Plaintiff's total damage claim amounts to \$450.82.

{¶ 5} 5) Defendant contended plaintiff failed to produce evidence establishing the property items claimed were lost or stolen while under the custody and care of WCI staff. Defendant submitted plaintiff's property inventory dated September 1, 2004, and recorded upon plaintiff's arrival at TCI after being transferred from WCI. Plaintiff signed this inventory certifying that, "[a]ll of my personal property that is listed on this inventory form has been returned to me." None of the alleged missing property claimed by plaintiff is listed on this

September 1, 2004, inventory.

{¶ 6} 6) On February 13, 2006, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his property items consisting of clothing, tobacco products, and a dental plate were lost or stolen while he was incarcerated at WCI. Plaintiff submitted a copy of his property inventory compiled at WCI on May 1, 2004, when he was transferred to a segregation unit. In respect to items claimed, this May 1, 2004, inventory lists one box of laundry soap, two pairs of sweat pants, three sweat shirts, one pair of boots, two towels, two thermal underwear tops, one thermal underwear bottom, five packs of cigarettes, twenty boxes of cigars, and false teeth. No dress shoes are listed, although a pair of gym shoes is recorded as well as a pair of shower shoes. Plaintiff submitted a copy of a subsequent property inventory dated August 30, 2004, and compiled at WCI in preparation for his transfer to TCI. This inventory lists two packs of cigarettes and twenty boxes of cigars as well as items not represented in plaintiff's complaint. Laundry soap, sweat pants, sweat shirts, boots, towels, thermal underwear, and false teeth are not listed on this inventory. No shoes of any kind are listed on the August 30, 2004, inventory. The submitted September 1, 2004, inventory lists, among other items, one towel, tobacco-one pack, one sweat shirt, and a pair of gym shoes. From reviewing all of plaintiff's assertions in respect to the loss of shoes, it appears the type of shoes allegedly missing are dress shoes, not gym shoes or shower shoes. It should be noted a pair of "State

Issue" shoes are listed on plaintiff's May 1, 2004, inventory. Claims for state issued property are not compensable.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 6) Plaintiff's failure to prove delivery of a pair of personal shoes to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 13} 7) Negligence on the part of defendant has been shown in respect to the loss of all remaining property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 14} 8) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 15} 9) Defendant is liable to plaintiff in the amount of \$300.00, plus the \$25.00 filing fee.

IN THE COURT OF CLAIMS OF OHIO

JEFF WEISHEIT	:	
Plaintiff	:	
v.	:	CASE NO. 2005-10292-AD
OHIO DEPT. REHAB. AND CORR.	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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 plaintiff in the amount of \$325.00, which includes the filing fee. Court costs are 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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4/14

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