

[Cite as *Scebbi v. Ohio State Penitentiary*, 2006-Ohio-7186.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL SCEBBI :  
 :  
 Plaintiff :  
 :  
 v. : CASE NO. 2005-11493-AD  
 :  
 OHIO STATE PENITENTIARY : MEMORANDUM DECISION  
 :  
 Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) On or about August 20, 2005, employees of defendant, Ohio State Penitentiary ("OSP"), packed and assumed control over the personal property of plaintiff, Michael Scebbi, an inmate.

{¶ 2} 2) On August 25, 2005, plaintiff was transferred from OSP to Southern Ohio Correctional Facility ("SOCF"). Plaintiff asserted that after he arrived at SOCF he discovered multiple items of his personal property were not forwarded from OSP.

{¶ 3} 3) Consequently, plaintiff filed this complaint seeking to recover \$652.65 for the loss of personal property items, plus \$1,500.00 for the loss of legal materials, including criminal trial transcripts. The filing fee was paid.

{¶ 4} 4) Defendant admitted liability for the loss of plaintiff's personal property items in the amount of \$652.65.

{¶ 5} 5) In his response to defendant's investigation report, plaintiff insisted he should be awarded an additional \$1,500.00 in damages for the loss of his legal documents. Plaintiff did not produce evidence, other than his own assertion, that his legal documents were packed by or delivered to OSP personnel.

#### 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's failure to prove delivery of legal materials 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.

{¶ 11} 6) Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst.*, Court of Claims No. 2002-05751; 2005-Ohio-

4455, obj. overruled, 2005-Ohio-5068.

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

{¶ 13} 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.

{¶ 14} 9) The court finds defendant liable to plaintiff in the amount of \$652.65 for property loss and related expenses, plus \$25.00 for filing fee reimbursement.

IN THE COURT OF CLAIMS OF OHIO

MICHAEL SCEBBI	:	
Plaintiff	:	
v.	:	CASE NO. 2005-11493-AD
OHIO STATE PENITENTIARY	:	<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 plaintiff in the amount of \$677.65, 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:

Michael Scebbi, #182-557	Plaintiff, Pro se
P.O. Box 45699	
Lucasville, Ohio 45699	

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

RDK/laa

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