

consequently filed this complaint seeking to recover \$1,032.58, the estimated replacement cost of the missing material. When plaintiff originally complained about his missing legal material he valued the property at \$450.00 and described the property as "legal work, transcripts of my case, 25 envelopes, notebooks, pens, and other assorted materials."

{¶ 4} 4) Defendant related plaintiff and his personal property were transferred from the Lake Erie Correctional Institution ("LaECI") to LorCI on September 28, 2005. Incident to this transfer, plaintiff's property was inventoried. Plaintiff signed the September 28, 2005, property inventory acknowledging the inventory was a complete and accurate accounting of his property. No books, envelopes, legal transcripts, or miscellaneous legal materials are specifically listed on this inventory, although a generic category, "papers" is marked. Another inventory of plaintiff's property was compiled on October 11, 2005, in connection with his transfer from LorCI to NCCI. No books, envelopes, legal transcripts, or miscellaneous legal materials are specifically listed on this inventory, although the items "papers" is marked. Plaintiff signed this inventory acknowledging it represented a complete and accurate listing of his property. Defendant denied ever exercising control over the property plaintiff alleged was lost or stolen during the transfer procedure. Defendant suggested all of plaintiff's property that was scheduled for transfer from LorCI to NCCI was contained in two boxes, not three as plaintiff has asserted.

{¶ 5} 5) On February 27, 2006, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his property scheduled for transfer was contained in three boxes and one of those boxes was lost en-route from LorCI to NCCI. Plaintiff did file a theft/loss report regarding lost property when he arrived at NCCI. Plaintiff claimed, "envelopes, legal work, papers, notebooks, transcripts statements, evidence for appeals & lawsuit," valued at about \$450.00 were not transferred on defendant's transport bus. The transporting officers verified a box containing the alleged missing property was not on the transport bus. Plaintiff contended this verification constitutes proof a box containing the alleged missing property actually existed and was misplaced by defendant's employees. The trier of fact disagrees. Plaintiff asserted defendant's employee clearly acknowledged (in the October 11, 2005, theft/loss report) the existence of a third box containing his property that was missing or lost. The October 11, 2005, theft/loss report notes defendant's employees acknowledged a third box of plaintiff's property was not on the transport bus when it arrived at NCCI. This notation does not represent an admission a third box existed, but an acknowledgment that a third box could not be found on the transport bus. On June 9, 2006, plaintiff filed a request to amend his claim with an affidavit of fellow inmate James Mason. Mason asserts while he was not with plaintiff when plaintiff's boxes were initially loaded on the bus, he was with him when the boxes were unloaded. He claims one of plaintiff's boxes was missing. However, since he was not present at the time of the initial loading, his knowledge of the number of boxes plaintiff possessed is based

solely on plaintiff's statements. Plaintiff claimed he possessed physical evidence establishing his property was contained in three boxes, defendant packed three boxes of property, and subsequently lost one of those boxes. Plaintiff did not submit any physical evidence establishing the existence of three boxes of property packed and marked by defendant.

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 certain items of property 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 has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

IN THE COURT OF CLAIMS OF OHIO

STANLEY TILLMAN :

Plaintiff :

v. :

CASE NO. 2005-11132-AD

OHIO DEPARTMENT REHABILITATION AND CORRECTIONS :

ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant :

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

Plaintiff's motion to submit additional evidence is GRANTED. 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Stanley Tillman, #421-940
P.O. Box 1812
Marion, Ohio 43301-1812

Plaintiff, Pro se

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

For Defendant

RDK/laa

4/25

Filed 6/20/06

Sent to S.C. reporter 3/16/07