

[Cite as *Silverman v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7244.]
IN THE COURT OF CLAIMS OF OHIO

PERRY R. SILVERMAN :
 :
 Plaintiff :
 :
 v. : CASE NO. 2006-01157-AD
 :
 OHIO DEPARTMENT OF : MEMORANDUM DECISION
 REHABILITATION AND CORRECTION :
 :
 Defendant :

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FINDINGS OF FACT

{¶ 1} On September 2, 2005, plaintiff, Perry R. Silverman, an inmate incarcerated at defendant's Correctional Reception Center ("CRC"), was transferred to defendant's Pickaway Correctional Institution ("PCI"). Plaintiff pointed out that on the morning of his transfer he was instructed by CRC employees to pack his personal property items into a net mesh bag. Plaintiff related he packed all his property including a pair of prescription eyeglasses into the provided bag and was escorted to the CRC dining hall for breakfast. Plaintiff further related that before he was seated for breakfast he was instructed to leave the bag containing his property on the floor and against the wall of the CRC dining hall. After eating breakfast, plaintiff retrieved the bag containing his property and was escorted into another building on CRC grounds. Plaintiff asserted he was then ordered to empty the bag containing his property and transfer the contents into a plastic bag. Plaintiff recalled that when he emptied his property bag he observed his prescription eyeglasses were missing. Plaintiff maintained he immediately

reported the fact his eyeglasses were missing to CRC personnel, but nothing was done. Plaintiff noted he was ordered to board the transfer bus to PCI without receiving any resolution regarding his missing eyeglasses. Plaintiff asserted the eyeglasses have never been recovered and he has consequently filed this complaint seeking to recover \$507.06, the replacement cost of a pair of eyeglasses. Plaintiff contended his eyeglasses were lost as a proximate cause of negligence on the part of CRC staff in failing to protect his personal property. The filing fee was waived.

{¶ 2} Defendant denied any liability in this matter. Defendant stated, "[t]he eyeglasses plaintiff claims to have lost were not packed up and inventoried," incident to plaintiff's September 2, 2005, transfer from CRC to PCI. Defendant denied plaintiff reported any missing items when his property was packed and inventoried. Defendant acknowledged plaintiff possessed reading glasses and sunglasses when he arrived at CRC on August 3, 2005. Defendant submitted a copy of plaintiff's property inventory dated September 2, 2005. Neither sunglasses nor reading glasses are listed on the inventory. The inventory bears plaintiff's signature certifying the property listing as complete and accurate. Defendant denied plaintiff made any report concerning missing eyeglasses to CRC staff on September 2, 2005. Defendant denied any CRC employees breached any duty of care owed to plaintiff in respect to the protection of his property.

{¶ 3} Plaintiff responded to defendant's investigation report by insisting his eyeglasses, "were lost or stolen while in the custody or control" of CRC staff. Plaintiff asserted his eyeglasses were lost or stolen before the remainder of property was inventoried on September 2, 2005. Plaintiff recalled he did report the loss of his eyeglasses to CRC personnel, "but they responded that nothing could be done." Plaintiff contended he did indeed pack his eyeglasses on the morning of September 2, 2005 and the glasses were subsequently lost or stolen while his property was under the custody of CRC employees when he was at breakfast.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 6) Plaintiff's failure to prove delivery of eyeglasses 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.

{¶ 10} 7) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particularly persuasive.

{¶ 11} 8) Plaintiff has failed to prove, by a preponderance of the evidence, any eyeglasses were lost, discarded or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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v. :

CASE NO. 2006-01157-AD

OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION :

ENTRY OF ADMINISTRATIVE
DETERMINATION

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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7/31

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