

[Cite as *Howard v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-2405.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JEFFERY L. HOWARD

Plaintiff

v.

OHIO DEPT. OF REHAB. AND CORR.

Defendant

Case No. 2006-07830-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On July 12, 2006, a massive institutional shakedown search was conducted at defendant's North Central Correctional Institution ("NCCI"). Plaintiff, Jeffery L. Howard, an inmate incarcerated at NCCI, stated his universal adapter, two cassette tapes, and two photographs were discarded or lost during the shakedown search.

{¶2} 2) Consequently, plaintiff filed this complaint seeking to recover \$21.84, the estimated replacement value of the alleged missing property items. Plaintiff was not required to pay a filing fee to pursue this action.

{¶3} 3) Defendant contended plaintiff did not offer sufficient evidence to prove the property items claimed were lost or discarded by NCCI personnel during the July 12, 2006, shakedown operation. Defendant denied any liability in this matter. Defendant denied the shakedown search was improperly conducted. Defendant denied the property claimed was confiscated by NCCI staff.

{¶4} 4) Plaintiff filed a response. Plaintiff insisted his property items were lost or discarded by NCCI employees during the July 12, 2006, shakedown search.

CONCLUSIONS OF LAW

{¶5} 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 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.

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 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.

Case No. 2006-07830-AD

- 3 -

MEMORANDUM DECISION

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JEFFERY L. HOWARD

Plaintiff

v.

OHIO DEPT. OF REHAB. AND CORR.

Defendant

Case No. 2006-07830-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE
DETERMINATION

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:

Jeffery L. Howard, #301-279
670 Marion-Williamsport Road
P.O. Box 1812
Marion, Ohio 43301

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

RDK/laa
4/5
Filed 4/18/07
Sent to S.C. reporter 5/18/07