

# 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

KENNETH BIGGERS

Plaintiff

v.

NOBLE CORRECTIONAL  
INSTITUTION

Defendant

Case No. 2006-01378-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} 1) From December 1, 2005 through March 1, 2005, plaintiff, Kenneth Biggers, an inmate, was incarcerated at defendant, Noble Correctional Institution (“NCI”). Plaintiff was subsequently transferred to the Belmont Correctional Institution (“BeCI”).

{¶2} 2) Plaintiff related that while he was incarcerated at NCI, he was transferred from the institution’s general population to a segregation unit. Plaintiff pointed out that when he was about to be transferred documents relating to the appeal of his criminal conviction were confiscated by an NCI employee. Plaintiff noted he had his, “appeal packet ready for notarization before I could get it notarized NCI corrections officers came got me one morning took me to (segregation).” Plaintiff stated a staff member at NCI, “stole my mail.” However, plaintiff also observed the appeal packet was later given to him after he met with his case manager at NCI and asked her to retrieve the documents. Plaintiff explained the NCI case manager forwarded his appeal packet to him, had the documents notarized, and provided envelopes to use to mail the appeal. Plaintiff asserted he placed the appeal packet in an envelope and put this envelope along with another envelope containing a personal letter to his sister, “in the

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cell door.” According to plaintiff, the letter containing the appeal packet and personal letter were then picked up by an NCI corrections officer.

{¶3} 3) Plaintiff recalled he was transferred from NCI to BeCI (on or about March 1, 2005) a few days after his mail was delivered to defendant’s employee. Plaintiff recorded, at some time after he arrived at BeCI, he was given the appeal packet back and was informed it “weighed too much.” Presumably, the appeal packet did not carry sufficient postage for its weight. Plaintiff stated he authorized more postage for the appeal packet although he did not possess any funds in his inmate account. Plaintiff acknowledged the appeal packet was forwarded to BeCI from NCI and then mailed from BeCI.

{¶4} 4) Additionally, plaintiff related that while he was at BeCI he telephoned his sister and asked her if she received the letter he wrote to her. Plaintiff stated his sister told him she did not receive a letter from him. Plaintiff asserted the letter to his sister was never mailed from NCI, but was recovered and forwarded to him at BeCI in late April, 2005. Plaintiff then mailed the letter to his sister.

{¶5} 5) Plaintiff filed this complaint against NCI insisting the conduct of NCI staff in failing to mail his appeal packet and personal letter was actionable. Plaintiff did not state a damage amount in his complaint. Plaintiff was not required to pay a filing fee to prosecute this action.

{¶6} 6) Defendant denied any NCI staff member mishandled plaintiff’s mail. Defendant contended plaintiff failed to offer any evidence to establish he suffered loss and resulting damages due to the procedures involved in handling his mail. Defendant explained plaintiff himself could have avoided any delay with mailing the appeal packet had he applied for indigent assistance to pay for mailing costs; a service available to him. Indigent mail service provides inmates with free first class mail to courts of law. Additionally, inmates are provided with one free stamped envelope per week.

{¶7} 7) Plaintiff filed a response offering an opinion concerning why he was transferred from the general population to a segregation unit at NCI. Plaintiff asserted

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that due to the fact he was in segregation his appeal was delayed and consequently, dismissed. Plaintiff stated his mail was put “in free envelopes, 2 pieces of mail 2 envelopes none of them reached there destination.” Plaintiff contended NCI personnel conspired with the Morgan County Sheriff to prevent his mail from being delivered.

#### CONCLUSIONS OF LAW

{¶18} 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.

{¶19} 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.

{¶10} 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.

{¶11} 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.

{¶12} 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.



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### 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
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