

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

TONY L. NELMS, SR.

Plaintiff

v.

SOUTHEASTERN CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-01401-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On or about August 25, 2006, plaintiff, Tony L. Nelms, Sr., an inmate, was transferred from defendant, Southeastern Correctional Institution (SCI) to Ross Correctional Institution (RCI).

{¶2} 2) Plaintiff asserted that when his transfer was complete defendant failed to transfer \$17.00 from his SCI inmate account to his RCI inmate account. Plaintiff explained that the \$17.00 amount represented the remaining balance from a \$20.00 money order his wife, LaTasha Nelms, had mailed to him at SCI. Plaintiff filed this complaint seeking to recover \$17.00, the amount he claims defendant failed to credit to his inmate account after being transferred to RCI. Plaintiff was not required to pay a filing fee to prosecute this action.

{¶3} 3) Defendant maintained all funds plaintiff had in his inmate account at SCI were forwarded to RCI on August 30, 2006. These funds totaling \$16.14 were posted at RCI on September 11, 2006. Both defendant and plaintiff submitted copies of plaintiff's commissary purchase order from SCI dated August 21, 2006. This order reflects that plaintiff had a beginning account balance of \$18.93 and made \$5.04 worth of purchases. Plaintiff's ending account balance on August 21, 2006, would have

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amounted to \$13.89. Both defendant and plaintiff submitted copies of plaintiff's commissary purchase order from RCI dated September 14, 2006. This order reflects that plaintiff had a beginning account balance of \$16.89. Defendant did not submit any evidence to show that plaintiff made any commissary purchases or had funds deducted or added to his inmate account between August 21, 2006 and September 14, 2006. Defendant did not offer any explanation to reconcile the difference in plaintiff's inmate account balance on August 21, 2006, \$13.89 and his account balance on September 14, 2006, \$16.89.

{¶4} 4) Defendant submitted a copy of a document that appears to represent plaintiff's account balance and perhaps transactions compiled during the month of August 2006. This typed balance statement contained the hand printed notation "transferred to RCI" and is reproduced in its entirety as follows with the only printed notation reproduced in typed format.

A455-082	Nelms, Tony	BAL FWD		
		8/4/06 30.00	.75	
		8/22/06	01.00	5.04- 005981
		8/30/06	30.01	2.25
		8/30/06	05.00	16.14- 47631

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**** * * DELETED * * *** CURR. BAL. transferred to RCI

{¶5} After reviewing this designated account statement, the trier of fact is unable to make any determination regarding the nature and amount of transactions occurring on plaintiff's account during August, 2006.

{¶6} 5) In both his complaint and response plaintiff submitted copies of an envelope mailed to him at SCI by LaTasha Nelms from Columbus, Ohio on August 21, 2006. The envelope bears a stamp on the back, "NOTICE FUNDS RECEIVED." The notice stamp bears the date August 25, 2006, and amount \$20. The envelope also bears an inspection stamp and received stamp. Plaintiff asserted the envelope submission constitutes evidence a \$20.00 money order intended for deposit in his account was received by SCI personnel at the approximate time of his transfer to RCI. Plaintiff related the \$20.00 money order received at SCI on August 25, 2006, if deposited and added to his existing account balance of \$13.89, should have amounted to a total account balance of \$33.89 upon his transfer to RCI. Plaintiff reasoned that \$33.89 should have been transferred to his new account at RCI, not \$16.89 as reflected on his September 14, 2006, commissary slip or \$16.14 the amount represented on the designated account statement submitted by defendant. Plaintiff contended that he has offered sufficient evidence to prove defendant failed to credit a total of \$17.00 to his

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inmate account at RCI. The trier of fact agrees.

CONCLUSIONS OF LAW

{¶17} 1) 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, 39 O.O. 2d 366, 227 N.E. 2d 212, 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, 26 O.O. 2d 366, 197 N.E. 2d 598. The court finds plaintiff's assertions persuasive in regard to the failure of defendant to credit his account in the amount of \$17.00.

{¶18} 2) 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.

{¶19} 3) Negligence on the part of defendant has been shown in respect to the loss claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD. Defendant is liable to plaintiff in the amount of \$17.00.

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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 plaintiff in the amount of \$17.00. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
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