

# 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

TIMOTHY FARRARE

Case No. 2007-03439-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

## MEMORANDUM DECISION

CHILLICOTHE CORRECTIONAL I.

Defendant

### FINDINGS OF FACT

{¶1} 1) On or about September 23, 2006, plaintiff, Timothy Farrare, an inmate incarcerated at defendant, Chillicothe Correctional Institution (“CCI”), was transferred from the institution’s general population to a segregation unit for violating internal regulations.

{¶2} 2) Plaintiff’s personal property was inventoried, packed, and delivered into defendant’s custody incident to his transfer. Plaintiff asserted several items of his personal property were lost or stolen while under the control of CCI staff. Plaintiff claimed the loss of one pair of gym shorts, one hooded sweatshirt, an alarm clock, and one toboggan hat. Plaintiff filed this complaint seeking to recover \$45.00, the stated replacement cost of the alleged missing property items. Plaintiff was not required to pay a filing fee to pursue this action.

{¶3} 3) Plaintiff submitted copies of three of his property inventories compiled by CCI personnel and dated June 21, 2006, September 23, 2006, and January 22, 2007, respectively. Among property relevant to this claim the June 21, 2006 inventory lists three pairs of gym shorts, three sweatshirts, a clock, and one stocking hat. The September 23, 2006 inventory lists two or three pairs of gym shorts (the number 3 appears to have been written over the number 2), and two sweatshirts (the number 2 appears to have been written over the number 1). This inventory does not list a

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toboggan hat or a clock. The January 22, 2007, inventory lists two pairs of gym shorts and one sweatshirt. Neither the clock nor a toboggan hat are listed. Plaintiff signed all inventories submitted acknowledging the compilations as complete and accurate listings of all his property items.

{¶4} 4) Plaintiff submitted a package inventory dated December 21, 2003, which apparently shows he was sent a stocking hat (toboggan) and one sweatshirt on that date. On this inventory beside the printed listing “gym shorts” is a hand printed notation “size xx.” No notation appears with this listing to indicate the number of gym shorts enclosed.

{¶5} 5) Defendant denied liability in this matter. Defendant acknowledged plaintiff’s property was packed on September 23, 2006, and an inventory was compiled by CCI staff. The September 23, 2006, inventory lists three sweatshirts and three pairs of gym shorts. The inventory does not list a toboggan or clock. Defendant asserted all property listed on the inventory was returned to plaintiff. Defendant pointed out plaintiff signed this inventory under the notation, “I certify that the above listed items are a complete and accurate inventory of all my personal property.” Defendant contended plaintiff failed to prove any of his property was lost or stolen while under the control of CCI personnel. Defendant explained plaintiff’s property was returned on October 6, 2006, when he was released from segregation. Defendant maintained all property listed on the September 23, 2006 inventory as well as additional found property was returned to plaintiff. In respect to property relevant to this claim, plaintiff eventually received delivery of five pairs of shorts and three sweatshirts.

{¶6} 6) Plaintiff filed a response insisting all items claimed were lost or stolen incident to his September 23, 2006, transfer to the CCI segregation unit. Plaintiff asserted that when he regained possession of his property on October 6, 2006, CCI staff returned one sweatshirt and two pairs of gym shorts. Plaintiff submitted evidence showing he purchased a clock on December 22, 2003.

#### CONCLUSIONS OF LAW

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{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 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.

{¶11} 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.

{¶12} 6) Plaintiff’s failure to prove delivery of an alarm clock and toboggan hat 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.

{¶13} 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, 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 548. The court does not find

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plaintiff's assertions particular persuasive.

{¶14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, any gym shorts, sweatshirt, clock, or hat 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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MEMORANDUM DECISION

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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

11/27

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