

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

WENDELL WALKER

Case No. 2007-03803-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

CHILLICOTHE CORRECTIONAL INST.

Defendant

FINDINGS OF FACT

{¶1} 1) On or about September 12, 2006, mailroom personnel at defendant, Chillicothe Correctional Institution (“CCI”), received delivery of a guitar ordered through the mail by plaintiff, Wendell Walker, an inmate. Plaintiff stated he was unable to immediately receive the guitar due to the fact he was being transferred from CCI to attend a court session. Consequently, the guitar was stored in the CCI property vault until plaintiff returned from court.

{¶2} 2) Plaintiff recalled he returned to CCI on or about September 25, 2006, and went to the institution mailroom to retrieve his guitar. Plaintiff asserted that when the guitar was removed from the mailroom vault and handed to him he immediately noticed a crack around the entire perimeter on the neck of the musical instrument. Plaintiff pointed out both he and a CCI mailroom employee had observed the guitar when it arrived in the mail on September 12, 2006, and did not notice any cracks or defects on the instrument. Plaintiff maintained he immediately complained to CCI personnel about the condition of the guitar when he first noticed the damage on September 25, 2006. Plaintiff related he was advised to hold onto the guitar for a period of time and was subsequently advised to authorize the mailing of the instrument back to the vendor shipping company. Apparently, the damaged guitar was then mailed back to the vendor.

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{¶3} 3) Plaintiff implied the guitar was damaged while under the control of CCI staff. Therefore, plaintiff filed this complaint seeking to recover \$120.00, the replacement cost of a new guitar. The filing fee was paid.

{¶4} 4) Defendant contended the guitar was received by CCI staff in a damaged state. Defendant denied the guitar was damaged during the time the instrument was stored in the CCI property vault. Defendant denied any act by CCI personnel caused damage to plaintiff's guitar. Defendant argued plaintiff has not offered any proof to establish his guitar was damaged while under the control of CCI staff. Defendant maintained the first time plaintiff actually saw the guitar was when the instrument was shown to him by CCI employee, Officer Harold on September 25, 2006. Defendant related Officer Harold retrieved the guitar from the vault, presented it to plaintiff, and "showed him the veneer on the guitar was bubbled up and damaged." Defendant noted plaintiff elected to take possession of the guitar after observing its damaged condition and later decided to ship the guitar back to the vendor. According to defendant, the guitar was reshipped in a package that was not "safe and secure."

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 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.

{¶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



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MEMORANDUM DECISION

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.

{¶10} 6) Plaintiff has failed to show any causal connection between any damage to his guitar and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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