

[Cite as *Sudberry v. S. Ohio Correctional Facility*, 2007-Ohio-7242.]

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

MR. JAMES D. SADBERRY

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL
FACILITY

Defendant

Case No. 2006-07520-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, James D. Sudberry, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), alleged his personal property was lost or misplaced while under the custody and care of SOCF staff. Specifically, plaintiff claimed his Sony Walkman, AIWA radio/cassette player, Wahl beard trimmer, and comb were lost during December 2005.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$105.75, the estimated replacement cost of his alleged lost property items. Plaintiff also requested damages in the amount of \$2,394.25 for “pain and suffering” attendant to his property loss. Plaintiff was not required to pay a filing fee to pursue this action. Plaintiff’s claim for pain and suffering was previously dismissed. Consequently, plaintiff’s claim for damages is limited to \$105.75.

{¶3} 3) Defendant denied any liability in this matter. Defendant stated no documentation exists to indicate SOCF staff packed or inventoried plaintiff’s property during the month of December 2005. Defendant explained plaintiff has spent a considerable amount of time since March 2004 assigned to a level 4B unit which is a restricted privilege level. Property items not permitted in level 4B are held in long term storage by defendant’s staff. Defendant denied any property owned by plaintiff that was placed in long term storage was lost, stolen, or destroyed. Defendant asserted plaintiff failed to offer proof to establish his property items claimed were lost, stolen, or destroyed while under the custody of SOCF personnel. Defendant submitted a copy of plaintiff’s property inventory dated October 11, 2004. This inventory lists one Sony cassette player, one JWIN radio, one Wahl razor, and a comb.

{¶4} 4) Plaintiff filed a response claiming his Sony Walkman was lost and his comb was confiscated on or about February 15, 2005. Plaintiff contended his Wahl beard trimmer was sent out of SOCF for service and was never returned.

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.

{17} 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.

{18} 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.

{19} 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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11/28

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