

[Cite as *Love v. Ohio Reformatory for Women*, 2008-Ohio-1203.]

# 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](http://www.cco.state.oh.us)

HARMONY LOVE

Plaintiff

v.

OHIO REFORMATORY FOR WOMEN

Defendant

Case No. 2007-04257-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION



## FINDINGS OF FACT

{¶1} 1) Plaintiff, Harmony Love, an inmate incarcerated at defendant, Ohio Reformatory for Women (“ORW”), stated she authorized ORW staff to mail her fan to her home address on or about September 6, 2006. Plaintiff further stated she placed the fan in a box, sealed the box, and had it weighed to ascertain postage costs. Plaintiff claimed after she delivered the fan to ORW mailroom staff, the fan was removed from the box by an unidentified individual at ORW and the empty box which had contained the fan was mailed from a local post office. Plaintiff filed this complaint seeking to recover \$17.00, the replacement cost of the fan, plus \$4.90 for postage costs charged against her inmate account, “to ship an empty box.”

{¶2} 2) In a completely different matter, plaintiff explained she was transferred from the Franklin Pre-Release Center (“FPRC”) back to ORW on or about December 29, 2006. Plaintiff maintained all her personal property was placed in a bag at FPRC and secured in a van for transport back to ORW. Plaintiff recalled she regained possession of her personal property on or about January 14, 2007, and discovered several items were missing from the returned property. Plaintiff noted her missing property items included a pair of eyeglasses, one book, mail, twenty embossed envelopes, shampoo, soap, five pairs of underwear, five pairs of socks, one sports bra, a hair brush, a toothbrush, toothpaste, deodorant, and a pair of shower shoes. Plaintiff asserted her personal property was lost or stolen while under the control of ORW personnel sometime between December 29, 2006 and January 14, 2007. Plaintiff requested a total of \$314.00 representing the estimated value of her alleged missing property. Plaintiff was not required to pay a filing fee to pursue this action.

{¶3} 3) Defendant contended plaintiff failed to prove her fan was removed from a sealed box before it was mailed to her home address. Defendant noted plaintiff packed the fan in a box on September 6, 2006, pending her transfer to FPRC on September 7, 2006. Defendant related the box containing the fan was sealed with tape while plaintiff was present. According to defendant, the sealed box was then sent to the ORW mailroom to be mailed out. A total of \$11.93 was debited from plaintiff’s account to pay for postage costs to mail the fan. Defendant denied the fan was removed from the box at ORW. Defendant maintained ORW staff following “all the correct procedures

to pack and mail (plaintiff's) fan." Defendant asserted the fan was in a sealed box that was delivered to the local post office on September 7, 2006. Additionally, defendant asserted plaintiff was unable to provide proof, "she ever even purchased a fan at the ORW commissary." Defendant suggested plaintiff failed to prove she owned the fan.

{¶4} 4) In reference to plaintiff's second claim, defendant denied any liability for any alleged property loss. Initially, defendant offered plaintiff admitted the underwear and book were provided by ORW and consequently replaced by ORW "free of charge." Defendant contended plaintiff cannot recover the cost of state issue property that is subsequently lost or stolen. Defendant maintained plaintiff also received a new pair of eyeglasses on May 3, 2007, at no charge. Defendant explained plaintiff was eligible to receive updated eyeglasses and did in fact receive the updated eyewear.

{¶5} 5) Defendant argued plaintiff failed to offer sufficient evidence to establish any of her personal property including envelopes, shampoo, deodorant, a toothbrush, toothpaste, a hair brush, shower shoes, socks, and a sports bra were lost while under the control of ORW staff. Defendant submitted a copy of plaintiff's property inventory compiled at FPRC and dated December 15, 2006. This inventory does not list any shampoo, envelopes, hair brush, shower shoes, or sports bra, although six state issue braziers are listed. The December 15, 2006, inventory does list a toothbrush, toothpaste, deodorant, and nine pairs of socks. On January 14, 2007, plaintiff signed the inventory acknowledging all listed property was returned to her possession. Plaintiff related she was ordered to sign the inventory without having any opportunity to inspect her returned property. Furthermore, the December 15, 2006, inventory does not list a book, but does list reading glasses and state issue underwear.

{¶6} 6) Plaintiff was initially incarcerated at ORW on June 1, 2006. Evidence has shown plaintiff received four bras, eight pairs of socks, eleven envelopes, and thirteen pairs of underwear between June 1, 2006 and September 6, 2006, when she was transferred to FPRC. On August 17, 2006, ORW medical personnel received

personal eyeglass frames for plaintiff. From June 1, 2006 to January 14, 2007, plaintiff shopped on two occasions at institution commissaries spending a total of \$10.98. A record of the items plaintiff purchased on these two occasions was not made available.

#### CONCLUSIONS OF LAW

{¶7} 1) 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.

{¶8} 2) Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶9} 3) Plaintiff's failure to prove delivery of shampoo, envelopes, hair brush, shower shoes, and sports bra 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.

{¶10} 4) Plaintiff cannot recover for property loss when she fails to produce sufficient evidence to establish defendant actually assumed control over the property. See *Whiteside v. Orient Correctional Inst.*, Ct. of Cl. No. 2002-05751; 2005-Ohio-4455, obj. overruled, 2005-Ohio-5068.

{¶11} 5) 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} 6) This court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is lost. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Additionally, plaintiff's claims for the loss of state issued property items are denied since she has

failed to offer sufficient proof to show she owned these articles. See *Sanford v. Ross Correctional Inst.*, Ct. of Cl. No. 2006-03494-AD, 2006-Ohio-7311.

{¶13} 7) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining her claim. If her evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, she fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶14} 8) Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1990), 89-12968-AD. Plaintiff failed to prove the fan was lost by defendant prior to mailing.

{¶15} 9) Furthermore, plaintiff has failed to prove, by a preponderance of the evidence, any additional property claimed was lost 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:

Harmony Love, #64529  
1479 Collins Avenue  
Marysville, Ohio 43040

Gregory C. Trout, Chief Counsel  
Department of Rehabilitation  
and Correction

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