

# 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

FRANK LACEY

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2005-07453-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} Plaintiff, Frank Lacey, an inmate formerly incarcerated at defendant's Lima Correctional Institution ("LCI"), filed an action under R.C. 2743.10 for property loss and damage resulting from incidents occurring in 2003. On June 12, 2003, plaintiff was transferred from the general population at LCI to a segregation unit. Incident to this transfer, plaintiff's personal property was inventoried, packed, delivered into the custody of LCI staff and stored in the LCI property vault. Plaintiff recalled he was released from segregation on June 16, 2003, and went to the LCI property vault to retrieve his packed property. Plaintiff pointed out that when he regained possession of his property, he discovered six bags of potato chips were not among the returned items and he noticed his alarm clock was broken. Furthermore, plaintiff was informed that a set of leg weights he had possessed since 1986 was being withheld and presumed declared contraband. The state of the instant action represents claims for the replacement value of plaintiff's potato chips, alarm clock, and leg weights.

{¶2} Plaintiff submitted written statements from two fellow inmates, Alexander R. Cook #390-465 and Woodson #233-921, who both related they witnessed plaintiff's property being packed on June 12, 2003. Cook recorded, "I saw a commissary bag containing hot potato chips laying on Inmate Lacey's bunk." Additionally, Cook wrote,

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“[t]he bags of potato chips were packed-up along with Inmate Lacey’s other property. Woodson, reporting his observations, stated, “I saw 5 bags of potato chips laying on (plaintiff’s) bunk.” Woodson also noted, “[t]he potato chips were taken away by the people doing the pack-up.” Both statements were dated July 2, 2003.

{¶3} Although plaintiff maintained his alarm clock was broken while under defendant’s control at some time after the June 12, 2003 transfer, he did not produce any evidence other than his own assertion to establish the clock was damaged. The clock was examined on July 1, 2003 and, according to defendant, the clock worked fine. Conversely, plaintiff insisted the clock did not keep proper time and was damaged in some way while stored in the LCI property vault.

{¶4} Plaintiff recalled he went to the LCI property vault on or about June 17, 2003 and requested his leg weights be returned, but the LCI vault officer refused to hand over the weights. Plaintiff explained he had been permitted by medical order to possess the weights for therapeutic purposes since 1988. Plaintiff stated a doctor’s permission slip to possess the weights and purchase receipts for the weights were on file at the LCI infirmary. Despite the fact plaintiff did have medical permission dating from 1988 to possess the leg weights, the weights were seized by defendant in 2003, and declared contraband. Defendant related a doctor at The Ohio State University was

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contacted about the leg weights and he advised the weights were no longer needed by plaintiff for physical therapy. On July 24, 2003, defendant filled out a Contraband Control Slip in reference to the leg weights and recorded on this document that the weights were "to be sent home." Plaintiff argued defendant did not have proper authority to confiscate his leg weights which he had a right to possess subject to the medical permission he received in 1988. Plaintiff expressed the belief that "only" a qualified doctor can rescind permission for him to use or possess the leg weights.

{15} Countering, defendant asserted the confiscation was a proper exercise of authority. Defendant related Dr. Amin, the medical authority at LCI, along with a specialist at The Ohio State University, determined plaintiff's medical condition no longer required the therapeutic benefit provided by the use of ankle weights. Therefore, since ankle weights did not constitute an approved item under the policies of defendant's institution, the decision was made to confiscate the weights and order the mailing out of the confiscated property. Furthermore, defendant offered that the Office of Correctional Health Care responded to the issue regarding permission to retain the weights by essentially concurring with the determination of Dr. Amin. Plaintiff asserted Dr. Amin never told him he was rescinding permission to retain the ankle weights.

{16} Plaintiff asserted he was summoned to the LCI Captain's office on or

about February 19, 2004, where he was ordered by LCI employee, Captain Hunt, to either authorize the mailing out of his ankle weights or authorize the destruction of the weights. Plaintiff stated, “[b]ecause of my limited amount of funds the leg weights were trashed.” Plaintiff contended defendant had no right to issue this order and he had a right to possess the weights. Defendant explained plaintiff did not have a valid permission slip from a doctor to possess the weights and had not possessed a physician ordered permission document for over two years prior to March 2004.

{¶7} Defendant filed an investigation report denying any liability in this matter regarding plaintiff’s claims for property loss, damage, and destruction. Defendant denied any responsibility for the loss of plaintiff’s potato chips and any damage to his clock. Also, defendant denied any liability for the destruction of the confiscated ankle weights. Defendant contended plaintiff failed to offer proof any of his property was lost, broken, or destroyed as a proximate cause of negligence on the part of LCI personnel.

{¶8} Defendant asserted no potato chips were listed on the inventory of plaintiff’s property compiled on June 12, 2003. Therefore, defendant denied evidence exists to show LCI staff received delivery of the potato chips. Defendant explained plaintiff signed the property inventory acknowledging the document represented a “complete and accurate” record of all his property items, despite the absence of any listing indicating potato chips were among the packed items.

{¶9} Defendant noted the ankle weights in plaintiff’s possession “were confiscated as contraband.” Although plaintiff received permission in 1988 to retain the weights for physical therapy purposes, defendant’s medical staff advised that by July 24, 2003, the weights were no longer considered medically necessary for therapy purposes. Defendant, pursuant to the internal policy, gave plaintiff the choice to either mail the confiscated weights out of the institution or authorize the destruction of the declared contraband. Defendant related plaintiff chose to have the confiscated weights destroyed.

{¶10} In respect to plaintiff’s alarm clock, defendant stated LCI Institutional

Inspector, DeCarlo Blackwell, examined plaintiff's clock on July 1, 2003, and determined the device was in proper working order. Defendant reported plaintiff brought the clock to Blackwell's office and "it worked fine for approximately fifty minutes." Essentially, defendant maintained plaintiff failed to show the clock was broken, let alone broken while in the hands of LCI staff.

{¶11} Plaintiff filed a response insisting his alarm clock was broken while under defendant's control. Plaintiff acknowledged he went to the office of LCI Institutional Inspector, DeCarlo Blackwell, to discuss the condition of the alarm clock. Plaintiff recalled he "spent approximately 15 to 20 minutes in the Inspector's Office." Plaintiff stated he and Blackwell disagreed over the issue of whether or not the clock kept proper time. Plaintiff related the clock was subsequently taken to the office of LCI employee, Sgt. Goodwin, who kept the clock in his office for a twelve hour period. Plaintiff alleged Sgt. Goodwin told him he had determined the clock was broken and he would write a report expressing this opinion. Plaintiff did not submit any statement from Sgt. Goodwin regarding any admissions. Plaintiff noted he subsequently purchased a substitute clock and therefore, mailed the original clock to his brother.

{¶12} Regarding the potato chips, plaintiff contended defendant had a duty to pack all his property, including potato chips, once he was transferred from his cell to a segregation unit on June 12, 2003. Plaintiff referenced the filed statements from fellow inmates, Alexander R. Cook #390-465 and Donald Woodson #233-921, who both wrote the bags of potato chips were placed on plaintiff's bunk and these specific items were packed along with plaintiff's other property that had been left in his cell. No potato chips are listed on the June 12, 2003 inventory recorded when plaintiff's property was packed. However, plaintiff maintained the potato chips were delivered into defendant's custody on June 12, 2003 and were lost before the property stored in the LCI vault was retrieved on June 16, 2003.

{¶13} Furthermore, plaintiff, in addressing the issue of the loss of his ankle weights, disputed the legality of the confiscation. Plaintiff stated the weights "were

confiscated and destroyed in opposition of (his) protest.” Plaintiff denied giving any authorization to defendant to destroy the confiscated ankle weights. Plaintiff confirmed he was given a choice to either mail the weights from LCI or have the weights destroyed. Plaintiff offered an explanation that he did not maintain sufficient funds in his inmate account to pay for postage to mail the weights and consequently, the weights were destroyed. Plaintiff argued the weights were destroyed pursuant to an “illegal order.” Plaintiff asserted he did not agree with the decision of defendant’s medical personnel regarding his current need for the weights as therapeutic aids. Plaintiff observed he did not consent to either the medical decision discontinuing permission to use the ankle weights or the actual confiscation of the property. Plaintiff argued defendant’s assertion regarding the opinion of LCI medical staff that the weights were no longer needed is unsupported by documentation. Plaintiff pointed out he never received a document from LCI medical staff rescinding the medical order he obtained on October 21, 1988 to possess the ankle weights. Plaintiff noted the replacement value of the destroyed ankle weights totals between \$30.00 and \$40.00. Plaintiff asserted the medical determination concerning the fact he no longer needed the ankle weights was arrived at after the weights were confiscated. Plaintiff contended this post facto medical determination was designed as a means to cover-up an illegal confiscation. Plaintiff related he continues to suffer from arthritis and joint inflammation; conditions which he claims were exacerbated when he no longer had access to his ankle weights.

#### CONCLUSIONS OF LAW

{¶14} 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.

{¶15} 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.

{¶16} 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.

{¶17} 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.

{¶18} 5) Plaintiff's failure to prove delivery of any potato chips 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. The evidence tends to show defendant did not pack any potato chips on June 12, 2003.

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

{¶20} 7) 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, 53 O.O. 25, 118 N.E. 2d 147.

{¶21} 8) Plaintiff has failed to prove a causal connection between the damage to his alarm clock and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶22} 9) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶23} 10) The state cannot be sued for the exercise of any executive or planning function involving the making of a policy decision characterized by the use of a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 14 OBR 506, 471 N.E. 2d 776.

{¶24} 11) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶25} 12) By refusing to authorize the mailing of the ankle weights, plaintiff in effect abandoned the withheld property and voluntarily relinquished any rights of ownership. *Hutton v. Mansfield Correctional Inst.* (2001), 2001-04727-AD.

{¶26} 13) By authorizing the destruction of the confiscated weights, plaintiff relinquished all ownership rights to the property. *Howard v. Mansfield Correctional Inst.*, Ct. of Cl. No. 2005-01293-AD, 2005-Ohio-4645.

{¶27} 14) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. Plaintiff has failed to show defendant did not have the authority or right to destroy the property claimed.

{¶28} 15) Plaintiff has failed to prove, by a preponderance of the evidence, any items of his property were lost, damaged, destroyed 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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### 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

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Filed 3/26/08

Sent to S.C. reporter 5/30/08