

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

ROBERT GOLDWIRE

Plaintiff

v.

OHIO DEPT. OF REHABILITATION AND CORRECTIONS

Defendant

Case No. 2007-09445-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 4, 2007, plaintiff, Robert Goldwire, an inmate incarcerated at defendant's Southern Ohio Correctional Facility ("SOCF"), was transferred from the SOCF general population to a segregation unit. Plaintiff's personal property was inventoried, packed, and delivered into the custody of SOCF staff incident to his transfer.

{¶ 2} 2) Plaintiff claimed that when he was released from segregation on June 26, 2007 and he regained possession of his property, he discovered several items were missing from the returned property. Plaintiff recalled the missing items included eleven compact discs, one set of ear buds, two sweatshirts, one pair of sweat pants, four pairs of undershorts, three sleeveless t-shirts, and three other t-shirts. Plaintiff related he was told the compact discs had been confiscated due to the fact he exceeded defendant's inmate possession limits for compact discs. Plaintiff filed this complaint seeking to recover \$259.85, the estimated replacement value for the alleged confiscated and missing property. Payment of the filing fee was waived.

{¶ 3} 3) Defendant maintained that all compact discs were returned to plaintiff's possession by August 24, 2007. Defendant asserted the returned compact discs (eleven) were all intact. Defendant asserted all of plaintiff's property that was packed on June 4, 2007 was subsequently returned to plaintiff's possession. Defendant denied ever packing sweat pants, sweatshirts, ear buds, undershorts, or t-shirts. There is no record defendant ever received delivery of these items on or about June 4, 2007.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 2) 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.

{¶ 6} 3) 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 issues 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.

{¶ 7} 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.

{¶ 8} 5) Plaintiff's failure to prove delivery of certain property items 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.

{¶ 9} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost or stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-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:

Robert Goldwire, #437-452
St. Rt. 11271
Lucasville, Ohio 45699

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North

Columbus, Ohio 43229

RDK/laa

9/23

Filed 10/1/08

Sent to S.C. reporter 12/19/08