

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

TONY L. NELMS, SR.

Plaintiff

v.

CHILLICOTHE CORRECTION INST.

Defendant

Case No. 2008-05184-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Tony L. Nelms, Sr., an inmate formerly incarcerated at defendant, Ross Correctional Institution (“RCI”), alleged his clothing items were lost while stored in the RCI vault on or about February 25, 2008. Plaintiff claimed his baseball cap, pajamas, sweat shirt, and sweat pants were lost. Plaintiff filed this complaint seeking to recover \$52.35, the estimated replacement cost of his missing clothing. Payment of the filing fee was waived.

{¶ 2} 2) Defendant admitted liability for the loss of plaintiff’s pajamas, sweat shirt and sweat pants. Defendant denied liability for the loss of the baseball cap based on the contention that plaintiff failed to prove delivery of this item to RCI staff. Defendant admitted damages in the amount of \$48.50.

CONCLUSIONS OF LAW

{¶ 3} 1) Plaintiff’s failure to prove delivery of a baseball cap to defendant

constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to this lost property item. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 4) Plaintiff has failed to prove, by a preponderance of the evidence, his baseball cap was lost as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 7} 5) Negligence on the part of defendant has been shown in respect to the loss of the remainder of plaintiff's property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD. Defendant is liable to plaintiff in the amount of \$48.50.

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MEMORANDUM DECISION

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Plaintiff

v.

ROSS CORRECTIONAL INST.

Defendant

Case No. 2008-05184-AD

Deputy Clerk Daniel R. Borchert

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 plaintiff in the amount of \$48.50. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
10/15
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