

# Court of Claims of Ohio

The Ohio Judicial Center  
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Columbus, OH 43215  
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TONY L. NELMS, SR.

Plaintiff

v.

ROSS CORRT. INST.

Defendant

Case No. 2008-03891-AD

Deputy Clerk Daniel R. Borchert

## ENTRY OF DISMISSAL

{¶ 1} On March 28, 2008, plaintiff, Tony L. Nelms, Sr., filed a complaint against defendant, Ross Correctional Institution. Plaintiff asserted on or about March 25, 2008, his brand new Nike tennis shoes were stolen. He alleges the defendant failed to conduct a cell-by-cell search for his shoes or conduct a unit shakedown. Plaintiff seeks damages in the amount of \$55.59 for the loss of his tennis shoes. Plaintiff was not required to submit the filing fee.

{¶ 2} Defendant filed a motion to dismiss. First, defendant contends plaintiff's own negligence resulted in the theft of his tennis shoes. Plaintiff admitted that he left his cell door unlocked and did not place his tennis shoes in his locker box. Finally, defendant asserted that a search was conducted but his tennis shoes could not be located.

{¶ 3} Plaintiff has not responded to defendant's motion to dismiss.

{¶ 4} The mere fact a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show

defendant breached a duty of ordinary or reasonable care. *Williams*.

{¶ 5} Defendant is not responsible for the actions of other inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 6} The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 7} Defendant has no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to the plaintiff. *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD. Plaintiff's lost property consisted of indistinguishable items. Nevertheless, defendant conducted a search and this search failed to recover plaintiff's lost tennis shoes. The type of search defendant conducts is within its discretion when searching for indistinguishable items.

{¶ 8} The Supreme Court of Ohio has held that "[t]he language in R.C. 2743.02 that 'the state' shall 'have its liability determined \*\*\* in accordance with the same rules applicable to suits between private parties \*\*\* means that the state cannot be sued for its legislative or judicial functions involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion." *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868.

{¶ 9} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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DRB/laa  
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