

IN THE COURT OF CLAIMS OF OHIO

MACK R. FLOWERS, #333-113	:	
2500 S. Avon Belden Road	:	
Grafton, Ohio 44044	:	Case No. 2002-02574-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
 Department of Rehabilitation and
 Correction
 1050 Freeway North
 Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} 1) On October 25, 2001, plaintiff, Mack R. Flowers, an inmate incarcerated at defendant's Grafton Correctional Institution, was transferred to an isolation unit.

{¶2} 2) Incident to his transfer, plaintiff's personal property was inventoried, packed and stored in the institution's property vault.

{¶3} 3) Plaintiff has asserted his three t-shirts, calculator and dress shirt were lost while under defendant's control. Consequently, plaintiff filed this complaint seeking to recover \$99.00, the estimated value of the alleged lost property items. Plaintiff submitted the filing fee with the complaint.

{¶4} 4) Defendant denied any liability in this matter. Defendant denied packing and exercising control over plaintiff's calculator and dress shirt. Plaintiff's inmate property inventory dated October 25, 2001 does not indicate a calculator and dress shirt among the packed property items. Plaintiff signed the inventory certifying the listed property was a complete and accurate record of all items owned. Defendant acknowledged packing six t-shirts belonging to plaintiff. The six t-shirts are reflected in the October 25, 2001 inventory. On November 28, 2001, plaintiff signed this inventory indicating all listed property, including the t-shirts, had been returned to him. Defendant denied losing any of plaintiff's property.

{¶5} 5) Plaintiff filed a response. Plaintiff did not submit sufficient evidence to establish his property was lost while under defendant's control.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 3) Plaintiff's failure to prove delivery of the calculator and dress shirt 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} 4) When an inmate signs a receipt stating defendant packed all of his property and the inmate did not contest the fact of this receipt, he has failed to show the Department of Corrections was liable for the alleged property loss. *Yocum v.*

Chillicothe Correctional Institution (1978), 78-0142-AD.

{¶10} 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.

{¶11} 6) 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.

{¶12} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost or stolen as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶13} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶14} IT IS ORDERED THAT:

{¶15} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶16} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk