

transferred from SCI to CCI with a pair of personal boots valued at \$300.00 and two pairs of state provided orthopedic shoes. Plaintiff implied his shoes along with his other personal property items were placed in storage at sometime while he was housed at CCI. In the grievance, plaintiff noted when he went to retrieve some of his stored property, he noticed his footwear was missing from among the stored articles.

{¶5} On December 15, 2003, plaintiff filed a theft/loss report at CCI regarding his alleged missing shoes. The alleged missing shoes were described in the report as one pair of black All-Star tennis shoes, one pair of black boots, and one pair of All Star velcro shoes. Plaintiff reported the shoes were discovered missing on November 24, 2003. CCI personnel conducted a search for the shoes, but the items could not be found.

{¶6} Defendant asserted plaintiff has failed to produce sufficient evidence to establish any of his property was lost at CCI. Additionally, defendant asserted plaintiff did not show he ever owned two pairs of orthopedic shoes and one pair of personal dress shoes while he was incarcerated at CCI. Defendant has no record of plaintiff having orthopedic shoes or dress shoes in his possession at CCI. Defendant denied receiving delivery of the alleged missing shoes.

{¶7} In his response to defendant's investigation report, plaintiff insisted he transferred from SCI to CCI with three pairs of shoes. Plaintiff related he had three pairs of shoes in his possession when he arrived at CCI. Plaintiff explained he was transferred to a segregation unit within three weeks of his arrival at CCI and his property was delivered to CCI staff incident to the transfer. Plaintiff assumed his shoes were among the delivered

property items. Plaintiff related that after he was transferred to the Warren Correctional Institution in May, 2004, he discovered his shoes were missing.

{¶8} Plaintiff's property inventory compiled on October 19, 2003, after he transferred from SCI to CCI lists one pair of black gym shoes and one pair of dress shoes. A property inventory dated November 24, 2003, lists a "single tennis shoe" was included in plaintiff's packed property items. No other shoes are listed. An inventory dated May 11, 2004, compiled at the Warren Correctional Institution, lists a pair of gym shoes among plaintiff's possessions. No other shoes are listed.

CONCLUSIONS OF LAW

{¶9} Plaintiff has no right to pursue a claim for lost 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 the loss of 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* (1984), 84-09071.

{¶10} 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.

{¶11} 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.

{¶12} Plaintiff's failure to prove delivery of dress shoes and orthopedic shoes 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.

{¶13} 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.

{¶14} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61.

{¶15} Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

[Cite as *Mitchell v. Chillicothe Correctional Inst.*, 2005-Ohio-2034.]
IN THE COURT OF CLAIMS OF OHIO

BILLIE MITCHELL :
Plaintiff :
v. : CASE NO. 2004-10001-AD
CHILLICOTHE CORRECTIONAL : ENTRY OF ADMINISTRATIVE
INSTITUTION : DETERMINATION
Defendant :
:.....

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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Billie Mitchell, #160-062
P.O. Box 120
Lebanon, Ohio 45036

Plaintiff, Pro se

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

For Defendant

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