

[Cite as *Dorsey v. Grafton Correctional Inst.*, 2005-Ohio-3967.]

IN THE COURT OF CLAIMS OF OHIO

DARYL DORSEY :
Plaintiff :
v. : CASE NO. 2005-02907-AD
GRAFTON CORRECTIONAL INST. : MEMORANDUM DECISION
Defendant :
: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On or about February 26, 2004, employees of defendant, Grafton Correctional Institution ("GCI"), confiscated a pair of gym shorts from plaintiff, Daryl Dorsey, an inmate. Plaintiff related he was told when the gym shorts were confiscated that he could either donate the shorts or authorize the destruction of the clothing item. Plaintiff explained the confiscated shorts were subsequently destroyed by GCI personnel. Plaintiff asserted the gym shorts constituted permissible property and defendant did not have proper authority to destroy this permissible article of clothing.

{¶ 2} 2) Consequently, plaintiff filed this complaint seeking to recover \$17.99, the estimated replacement cost of a pair of gym shorts, plus \$25.00 for filing fee reimbursement. The filing fee was paid.

{¶ 3} 3) Defendant acknowledged a pair of gym shorts were confiscated from plaintiff's possession and later destroyed. However, defendant denied any liability in this matter. Defendant asserted plaintiff was not the rightful owner of the gym shorts. Furthermore, defendant asserted plaintiff did not produce any

documentation to establish he actually owned the confiscated gym shorts. Defendant insisted there is no evidence to show plaintiff obtained the confiscated clothing item by permissible means such as through the mail or as a gift from an approved visitor. Defendant suggested plaintiff obtained the gym shorts, "through illegal dealings with other inmates." Defendant argued plaintiff failed to produce sufficient proof to establish he properly owned the confiscated gym shorts. Defendant related plaintiff arrived at GCI in August, 1999, and had one pair of gym shorts in his possession which were mailed from the institution at sometime in April, 2001.

Defendant further related there is no record of plaintiff receiving any sundry packages containing gym shorts and there is no record of plaintiff obtaining gym shorts by other legitimate means.

{¶4}4) In his response to defendant's investigation report, plaintiff maintained the gym shorts which were confiscated and destroyed were the same pair he brought to GCI in August, 1999. Plaintiff professed the "gym shorts" that were mailed from GCI in April, 2001, were actually cut-off sweat pants and not regularly tailored gym shorts. At the time a single pair of gym shorts was confiscated from plaintiff in February, 2004, he had three pairs of gym shorts in his possession. Plaintiff did not offer an explanation regarding how he obtained the two pairs of gym shorts that were not confiscated. Other than his own assertion, plaintiff did not offer any evidence to substantiate his contention that the gym shorts destroyed in 2004 were the same gym shorts he brought to GCI in August, 1999. When plaintiff arrived at GCI in August, 1999, he did not possess a pair of sweat pants. Plaintiff provided a property inventory dated August 31, 1999, and compiled incident to his transfer to GCI. The inventory lists one pair of gym shorts, but does not list plaintiff possessed any sweat pants at the time of transfer. Plaintiff did not provide any evidence showing when he obtained any sweat pants while incarcerated at GCI.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 3) Furthermore, an inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶ 8} 4) However, plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1984), 84-09071.

{¶ 9} "5) The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the confiscated property was not owned by plaintiff. Therefore, plaintiff may not recover damages associated with the loss of property he did not own. See *Mumm v. Ohio Dept. of Rehab. and Corr., et al.*, 2004-04574-AD, 2004-Ohio-5134.

{¶ 10} 6) This court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted

when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

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Plaintiff	:	
v.	:	CASE NO. 2005-02907-AD
GRAFTON CORRECTIONAL INST.	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>
: : : : : : : : : : : : : : : :		

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:

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For Defendant

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