

[Cite as *Lane v. Toledo Correctional Inst.*, 2005-Ohio-4319.]

IN THE COURT OF CLAIMS OF OHIO

EARNEST LANE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04055-AD
TOLEDO CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Earnest Lane, an inmate incarcerated at defendant, Toledo Correctional Institution ("ToCI"), asserted his personal property was seized by ToCI personnel on March 2, 2004, and subsequently destroyed.

{¶ 2} 2) Plaintiff explained his confiscated property items included two adult books valued at \$20.00, two bottles of baby oil valued at \$3.46, a bottle of vitamins (E) valued at \$3.99, two mirrors valued at \$3.22, a combination lock valued at \$5.74, a pig tail wire valued at \$.33, a silverware set valued at \$.18, and twenty-six cassette tapes valued at \$184.34. Plaintiff's total estimated value of his confiscated property items amounts to \$221.26. Plaintiff filed this complaint seeking to recover the total replacement cost of his confiscated and destroyed property. The filing fee was paid.

{¶ 3} 3) Plaintiff submitted a copy of a court order dated March 15, 2004, and issued by the Common Pleas Court of Lucas County. This order granted the Ohio State Highway Patrol authority to destroy contraband items seized from inmates at ToCI during a March

2, 2004, administrative sweep of the institution. Apparently, the property items seized from plaintiff were among the property subject to the destruction order issued by the Common Pleas Court of Lucas County.

{¶ 4} 4) On December 10, 2001, plaintiff entered ToCI. A property inventory compiled at that time listed the following property items relevant to this claim: fifteen cassette tapes, a combination lock, a bottle of vitamin E pills, one mirror, and magazines which may or may not have consisted of the adult books referenced in plaintiff's complaint. Plaintiff submitted evidence showing he purchased eleven additional cassette tapes at various times between March 12, 2002 and December 8, 2003.

{¶ 5} 5) Defendant acknowledged an administrative sweep occurred at ToCI on March 2, 2004, and multiple items of personal property were confiscated as contraband from many members of the inmate population. Defendant further acknowledged property was confiscated from plaintiff's cell incident to the March 2, 2004, administrative sweep. Although it is uncertain what or how much identifiable property was confiscated from plaintiff's cell, defendant admitted cassette tapes, a vitamin pill bottle, a wire, and a combination lock were seized. Defendant specifically denied mirrors, adult books, baby oil, and a silverware set were confiscated from plaintiff's possession. Defendant admitted the property seized from plaintiff was mishandled and destroyed without proper authorization. Defendant admitted liability for the seized items in the amount of \$191.41. Defendant disputed plaintiff's valuation of his vitamins which he seemingly possessed since December 10, 2001. Defendant denied ever exercising control over mirrors, adult books, a silverware set, and baby oil. Plaintiff insisted defendant confiscated and improperly destroyed all property claimed. Plaintiff reasserted his entire property loss

amount to \$221.36.¹

CONCLUSIONS OF LAW

{¶ 6} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) 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.

{¶ 10} 5) 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 11} 6) Plaintiff's failure to prove delivery of certain items (mirrors, baby oil, adult books, silverware) to defendant

¹ Plaintiff filed a response.

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.

{¶ 12} 7) In respect to the loss of cassette tapes, pigtail wire, vitamins, and lock, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 13} 8) The court finds defendant liable to plaintiff in the amount of \$191.41, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶ 14} 9) Plaintiff has failed to prove, by a preponderance of the evidence, any additional items of his property were improperly seized or destroyed as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

IN THE COURT OF CLAIMS OF OHIO

EARNEST LANE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04055-AD
TOLEDO CORRECTIONAL INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE</u> <u>DETERMINATION</u>
Defendant	:	
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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 \$216.41, which includes the filing fee. Court costs are

assessed against defendant. 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:

Earnest Lane, #410-983
P.O. Box 80033
Toledo, Ohio 43608

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
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For Defendant

RDK/laa
7/18
Filed 8/5/05
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