[Cite as Mitchell v. Chillicothe Correctional Inst., 2005-Ohio-7092.]

IN THE COURT OF CLAIMS OF OHIO

BILLIE MITCHELL :

Plaintiff :

v. : CASE NO. 2005-07038-AD

CHILLICOTHE CORRECTIONAL : MEMORANDUM DECISION

INSTITUTE

:

Defendant

FINDINGS OF FACT

- $\{\P \ 1\}$ 1) On May 4, 2004, plaintiff, Billie Mitchell, an inmate, was transferred from defendant, Chillicothe Correctional Institute ("CCI"), to the Warren Correctional Institution ("WCI").
- $\{\P\ 2\}$ 2) Plaintiff has alleged that at sometime prior to the May 4, 2004, transfer, his three pairs of gym shoes were lost while under the custody and control of CCI staff.
- $\{\P\ 3\}$ 3) Plaintiff filed this complaint seeking to recover \$240.00, the estimated replacement value of the alleged missing shoes.
- $\{\P4\}$ 4) Defendant submitted several copies of plaintiff's property inventories compiled at both CCI and WCI. All inventories reflect plaintiff did not possess more than one pair of gym shoes. The most recent inventory indicates plaintiff possessed one pair of gym shoes. Plaintiff is permitted to possess one pair of gym shoes.

CONCLUSIONS OF LAW

 $\{\P 5\}$ 1) 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.

- $\{\P 6\}$ 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.
- $\{\P7\}$ 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.
- $\{\P 8\}$ 4) Plaintiff's failure to prove delivery of additional gym 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.
- $\{\P\,9\}$ 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.
- $\{\P \ 10\}$ 6) 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.
- $\{\P\ 11\}$ 7) 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.

IN THE COURT OF CLAIMS OF OHIO

BILLIE MITCHELL :

> Plaintiff :

CASE NO. 2005-07038-AD v.

CHILLICOTHE CORRECTIONAL : ENTRY OF ADMINISTRATIVE

INSTITUTE 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 Plaintiff, Pro se P.O. Box 120 Lebanon, Ohio 45036

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

RDK/laa 12/2 Filed 12/7/05