

[Cite as *Moore v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5924.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT LEE MOORE	:	
Plaintiff	:	CASE NO. 2002-03651
	:	Magistrate Steven A. Larson
v.	:	
	:	<u>MAGISTRATE DECISION</u>
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
Defendant	:	
.....	:	

{¶ 1} This case was tried to a magistrate of the court on the issues of liability and damages. Plaintiff asserts that defendant lost or destroyed his property without his authorization when he was transferred from the Mansfield Correctional Institution (ManCI) to the Southern Ohio Correctional Institution (SOCF). At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16.

{¶ 2} When inmates are transferred between institutions, an inventory of their personal property is conducted and a list of that property is recorded on a form entitled “Inmate Property Record-disposition and Receipt.” After a transfer, inmates are to acknowledge receipt of their property by signing the bottom of the property record form. Rules regarding the types of personal property inmates may possess vary among the state correctional institutions. If any of the property transferred with an inmate is deemed to be contraband by the receiving institution, the inmate has the option of sending it home or giving consent to have it destroyed. If an inmate refuses to exercise either of the two options, the institution petitions a court for an order to destroy the contraband.

{¶ 3} Plaintiff testified that he was transferred from ManCI to SOCF on May 10, 2001, but that only a portion of his property was sent with him on the day that he was transferred. Plaintiff acknowledged the receipt of the property that was transferred with him by signing a property receipt

form on May 11, 2001. (Plaintiff's Exhibit 1A.) He further testified that he signed a "destroy order" for three items listed on the property record as contraband. (Plaintiff's Exhibit 1B.)

{¶ 4} Upon his arrival at SOCF, plaintiff was housed in K-5-43, which was a cell in the general population. Two weeks after his arrival, plaintiff was moved to J-4-60, a cell in administrative control. Plaintiff testified that on May 28, 2001, while he was in administrative control, Corrections Officer (CO) Shonkwiler approached him with a second Inmate Property Record-Disposition and Receipt which, besides listing acceptable property, identified a family photo album, a radio, and several personal items as contraband. (Plaintiff's Exhibit 2A.) According to plaintiff, CO Shonkwiler asked him whether he wanted the property that was listed as contraband to be sent to his home or destroyed. Plaintiff testified that, in response, he told CO Shonkwiler that he did not believe that the property, especially the family photo album, was contraband and, therefore, that he instructed CO Shonkwiler to give him a cash slip so that he could purchase postage to mail his property to defendant's central office for an opinion. Plaintiff claims that CO Shonkwiler provided him with a cash withdrawal slip; that he signed the slip; and that he included instructions to purchase postage and send his property to the Department of Rehabilitation and Corrections in Columbus. CO Shonkwiler testified that he had no recollection of giving plaintiff a withdrawal slip and that he did not know what happened to plaintiff's property.

{¶ 5} Beginning in January 2002, plaintiff sent a series of kites requesting an explanation as to the disposition of his property. In response to one of those kites, Sergeant Emmons replied, "you did not mail these items out you signed a destroy form." (Plaintiff's Exhibit 2C.) Finally, plaintiff complained to the Ohio State Highway Patrol that his property was missing. Trooper Warren Hunter testified that he conducted an investigation and concluded that there was no evidence of criminal activity and that, in fact, there was a destroy form in plaintiff's file relating to the missing property.

{¶ 6} When plaintiff was asked what he thought had happened to his property he said, "To be honest, I don't know. I do know I didn't sign a form to have it destroyed." Plaintiff also stated, "I signed for it to be mailed somewhere. It never got there."

{¶ 7} This court, in *Mullett v. Department of Corrections* (1976), Court of Claims No. 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. However, defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), Court of Claims No. 85-08061-AD; *Gilbert v. C.R.C.* (1990), Court of Claims No. 89-12968-AD.

{¶ 8} 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), Court of Claims No. 76-0368-AD.

{¶ 9} The court finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant was responsible for the loss of plaintiff’s property. By plaintiff’s own admission he does not know what happened to his property. It is equally as likely that plaintiff’s property was lost in the mail as that it was destroyed by defendant without plaintiff’s permission. Accordingly, judgment is recommended in favor of defendant. It is also recommended that plaintiff’s July 28, 2004, motion for summary judgment be denied.

A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court’s adoption of any finding or conclusion of law contained in the magistrate’s decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

Entry cc:

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