

{¶4} 4) Plaintiff submitted copies of titles for a cassette player and a set of headphones. These titles issued on October 26, 2001 are indicia of the fact plaintiff rightfully owned a radio/cassette player and headphones. Plaintiff maintained his radio/cassette player and headphones were lost while under defendant's control during May, 2002. Evidence has shown defendant packed plaintiff's radio/cassette player and headphones on May 15, 2002. Plaintiff filed informal complaints regarding the loss of his radio/cassette player. These complaints were filed on October 25, 2002 and November 21, 2002. Plaintiff filed a response in which he acknowledged he was not the rightful owner of the confiscated cassette player. Plaintiff seemingly reasserted his radio/cassette player and headphones were lost and not in his possession at the time a separate and distinct cassette player was confiscated from him.

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) 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.

{¶8} 4) In respect to the loss of all property items claimed, negligence by defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶9} 5) Plaintiff has suffered damages in the amount of \$128.45, 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.

{¶10} 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 \$153.45 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:

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RDK/tad
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