

inmate, Barry Gauntt, regarding the handling of the television set on December 26, 2002. Inmate Gauntt related he delivered plaintiff's television set to defendant's personnel and observed the set was in "perfect condition" at the time it was delivered. Plaintiff also filed a statement from another inmate, Eddie Smith, who also handled the television set on December 26, 2002. Smith asserted he took the television set to the institution vault and noticed the property was in an undamaged state.

{¶4} 4) Defendant denied any liability in this matter. Defendant suggested insufficient evidence has been presented to establish the television set was damaged while under its control. Defendant related plaintiff did not examine his television set immediately after the property item was released from the institution property vault. Evidence has shown plaintiff waited until he returned to his living area to examine his property. Defendant has essentially contended plaintiff has not offered sufficient proof to show his television was damaged while under defendant's control.

{¶5} 5) Plaintiff filed a copy of an incident report compiled by defendant's employee, C.O. Pugh. Pugh noted in this report that he observed plaintiff's television set at the time it was set for delivery to defendant. Pugh related the set was in good condition when he observed this particular piece of property.

{¶6} 6) Plaintiff suggested he was not given an opportunity to examine his property immediately after the items were released from the institution property vault. Plaintiff contended defendant's personnel discourage inmates from examining released property in the vault area. Plaintiff maintained his television set was delivered to defendant in an undamaged state and was subsequently damaged while under defendant's control. The trier of fact agrees.

CONCLUSIONS OF LAW

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 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.

{¶11} 5) Negligence by defendant has been shown in respect to the damage to plaintiff's television set. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶12} 6) Plaintiff has suffered damages in the amount of \$100.00, 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.

{¶13} 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 \$125.00, 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/laa
7/15
Filed 7/24/03
Sent to S.C. reporter 8/14/03