

IN THE COURT OF CLAIMS OF OHIO

WILLIAM MCCLAIN :
 Plaintiff :
 v. : CASE NO. 2003-06743-AD
 DEPT. OF REHABILITATION AND : MEMORANDUM DECISION
 CORRECTION :
 Defendant :
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FINDINGS OF FACT

{¶1} 1) On or about January 20, 2002, plaintiff, William McClain, an inmate incarcerated at defendant’s Southern Ohio Correctional Facility (SOCF), was transferred to a security control unit. Plaintiff’s personal property was inventoried, packed, and delivered into the custody of SOCF staff incident to the January 20, 2002 transfer.

{¶2} 2) On August 29, 2002, plaintiff was transferred from SOCF to the Ohio State Penitentiary (OSP). Plaintiff’s property which had been stored at SOCF was forwarded to OSP.

{¶3} 3) Plaintiff has asserted SOCF personnel failed to forward all his personal property to OSP. Plaintiff stated he did not receive the following items: a set of headphones, a television set, a radio/cassette player, four deodorant sticks, five cassette tapes, four bars of soap, twenty-four pouches of tobacco, eight containers of tuna, legal documents, a pair of Nike gym shoes, and a sweat suit. Plaintiff filed this complaint seeking to recover the listed value of all items he claimed were lost \$539.31. Plaintiff also seeks recovery of the \$25.00 filing fee.

{¶4} 4) Defendant admitted liability for the loss of plaintiff’s television set in the

amount of \$158.00. However, defendant denied any other property items belonging to plaintiff were lost while under the control of SOCF staff. Defendant has no record of ever receiving delivery of a cassette player and set of headphones. Defendant asserted plaintiff's gym shoes and cassette tapes were forwarded to OSP. Additionally, evidence has shown plaintiff's sweat suit, one bar of soap, and one deodorant stick were transferred to OSP. Plaintiff's property inventory compiled at SOCF on January 20, 2002 does not list any tobacco products, tuna, additional deodorant sticks, or additional bars of soap. "Legal work" is listed among the packed property on the January 20, 2002 inventory. No legal material is listed being received at OSP, but letters and papers are included among the property forwarded to OSP.

{¶5} 5) On September 29, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted defendant should be held liable for the value of all articles claimed. Plaintiff contended that regardless of the fact SOCF personnel never received delivery of certain items of property, defendant should still bear liability for the loss of these items.

CONCLUSIONS OF LAW

{¶6} 1) Although not strictly responsible for a prisoner's property, defendant had at least a 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.

{¶7} 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.

{¶8} 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.

{¶9} 4) Plaintiff's failure to prove delivery of certain items of property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation*

and Correction (1987), 86-02821-AD.

{¶10} 5) Plaintiff has failed to prove, by a preponderance of the evidence, additional property was lost or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶12} 7) The court finds defendant liable to plaintiff in the amount of \$158.00, 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 \$183.00, 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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For Defendant

RDK/laa

10/7

Filed 10/17/03

Sent to S.C. reporter 11/10/03