

including shoes, a radio/cassette player, commissary items, and foodstuffs. Defendant maintained plaintiff's shoes were recovered and returned to his possession. Defendant contended plaintiff has failed to prove he actually owned a radio/cassette player, commissary items, and foodstuffs at the time of his initial transfer, May 11, 2003. Defendant related plaintiff did not have sufficient funds to make commissary purchases. Defendant admitted damages in the amount of \$55.00.

{¶5} 5) On January 20, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff acknowledged his shoes were returned to his possession. Plaintiff contended he did purchase commissary items on May 9, 2003, which were subsequently lost by defendant. Plaintiff insisted he possessed foodstuffs which were also lost by defendant. Plaintiff did not provide additional evidence to establish he actually owned a radio/cassette player, food items, and commissary items on May 11, 2003, when he was transferred from SCI to CMC.

CONCLUSIONS OF LAW

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 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.

{¶10} 5) 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 lost or stolen property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶11} 6) Negligence on the part of defendant has been shown in respect to the loss of all property subject to defendant's admission. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶12} 7) 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.

{¶13} 8) Defendant is liable to plaintiff in the amount of \$55.00, 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.

{¶14} 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 \$80.00, 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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4/14

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