

[Cite as *Richardson v. Noble Correctional Inst.*, 2004-Ohio-2612.]

IN THE COURT OF CLAIMS OF OHIO

LEROY RICHARDSON :
Plaintiff :
v. : CASE NO. 2003-10341-AD
NOBLE CORRECTIONAL INSTITUTION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Leroy Richardson, as inmate incarcerated at defendant, Noble Correctional Institution (NCI), stated his photo album containing multiple photographs was stolen by another inmate at NCI. On or about May 3, 2003, the stolen photo album was recovered by NCI employee, Sgt. Williams. The album was found in the possession of an inmate identified as Bruce Mitchell.

{¶2} 2) Plaintiff related he asked Sgt. Williams to return his album after it was recovered from inmate Mitchell. Plaintiff explained he was told the album was lost.

{¶3} 3) Plaintiff asserted he never received his photo album containing fifty-four photographs after it entered the custody of NCI staff. Consequently, plaintiff filed this complaint seeking to recover \$200.00, the estimated value of the alleged lost photographs. Plaintiff was excused from paying the \$25.00 filing fee.

{¶4} 4) Defendant denied plaintiff's photographs were lost while under the control of NCI personnel. Defendant acknowledged the photographs were found in the possession of another inmate, then confiscated by NCI staff, and subsequently sent to the institution's contraband vault. However, defendant professed all the confiscated

photographs were ultimately returned to plaintiff. Furthermore, defendant denied having any knowledge of any additional photographs belonging to plaintiff which were stolen but remain unrecovered. Defendant denied any of plaintiff's photographs remain in the custody of NCI personnel.

{¶5} 5) On January 14, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff insisted he did not receive any photographs from NCI employees.

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 has failed to prove, by a preponderance of the evidence, his listed property was lost or stolen as a proximate result of any negligence attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶11} 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 defendant. Court costs are assessed against plaintiff. 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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