

[Cite as *Adkins v. Correctional Reception Ctr.*, 2004-Ohio-3263.]

IN THE COURT OF CLAIMS OF OHIO

DONALD R. ADKINS :
Plaintiff :
v. : CASE NO. 2003-11828-AD
CORRECTIONAL RECEPTION CENTER : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On June 27, 2003, employees of defendant, Correctional Reception (CRC), packed and inventoried personal property items belonging to plaintiff, Donald R. Adkins, an inmate. The packed property was stored under the care of CRC staff.

{¶2} 2) On July 3, 2003, all stored property was returned to plaintiff's possession.

{¶3} 3) Plaintiff has alleged that several items of his personal property were lost or stolen while under defendant's control. Plaintiff asserted the following items were not returned: a dictionary, a can of loose tobacco, 14 packs of tobacco, a lighter, a bottle of shampoo, 3 bags of coffee, 2 greeting cards, 2 envelopes, 2 boxes of tea bags, a tablet, 3 cans of soda pop, 6 embossed envelopes, 4 Ramen soups, a deck of cards, 3 pens, a toothbrush, and a tube of toothpaste.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$43.54, the estimated replacement value of his alleged missing property. Plaintiff was excused from paying the

filing fee.

{¶5} 5) Defendant denied any of plaintiff's property was lost or stolen while under the control of CRC personnel from June 27, 2003, to July 3, 2003. Defendant denied packing and receiving delivery of 14 packs of tobacco, a lighter, 3 bags of coffee, 2 greeting cards, 2 stamped envelopes, tea bags, 3 cans of soda pop, 6 embossed envelopes, 4 Ramen soups, playing cards, a toothbrush, and a tube of toothpaste. Defendant submitted a copy of plaintiff's property inventory compiled on June 27, 2003. None of the above listed property items appear on the June 27, 2003, inventory. Defendant acknowledged packing 3 pens, 2 tablets, a bottle of shampoo, a can of tobacco, and 2 books, which may have included a dictionary. Both defendant and plaintiff admitted these articles of property were returned to plaintiff on July 3, 2003.

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) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶9} 4) However, 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} 5) 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} 6) Plaintiff's failure to prove delivery of property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶12} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any property loss as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD. 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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