

confiscated from plaintiff's possession. The confiscated items were classified as contraband and included fifteen envelopes, emery boards, wires, a battery pack, glue, and homemade stereo box with speakers.

{¶5} 5) Defendant acknowledged items classified as contraband were confiscated from plaintiff's cell on August 11, 2003. These confiscated items included miscellaneous wires, envelopes, glue, emery boards, a battery pack, and homemade stereo speakers. Defendant denied any ManCI staff member confiscated headphones, greeting cards, or an antenna from plaintiff's possession. Defendant explained the confiscated emery boards and envelopes were destroyed pursuant to a court forfeiture order. Defendant related the battery pack and homemade speakers were prohibited items that plaintiff had no right to possess. Possibly the wires were a homemade antenna; another prohibited item plaintiff would have no right to possess. Additionally, defendant maintained plaintiff could not prove he was the rightful owner of the confiscated glue.

Defendant denied any confiscated items were destroyed without authorization. Defendant contended plaintiff failed to offer sufficient evidence to prove he was permitted to legitimately own the remaining confiscated items. Defendant denied confiscating other property (headphones, greeting cards, and antenna) plaintiff claimed was taken during the August 11, 2003, shakedown search of his cell. Defendant submitted a copy of an order from the Richland County Court of Common Pleas authorizing the forfeiture and destruction of the confiscated envelopes and emery boards.

{¶6} 6) On May 24, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff insisted he legitimately owned all items confiscated on August 11, 2003, including the homemade articles. Plaintiff claimed the confiscated homemade stereo speakers were actually his headphones placed in a

box. Plaintiff further claimed his greeting cards were contained in the confiscated envelopes which were subsequently destroyed under court ordered authorization. Plaintiff related the confiscated battery pack was given to him as a gift from a fellow inmate, an act prohibited by defendant's internal regulations. Plaintiff asserted the battery pack was not an altered homemade item, but separate batteries contained in their original packaging. Furthermore, plaintiff asserted the confiscated wire was actually a working part of his stereo receiver. Plaintiff withdrew his claim for the replacement value of the confiscated glue and emery boards.

CONCLUSIONS OF LAW

{¶7} 1) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61.

{¶8} 2) Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1984), 84-09071. In the instant claim, plaintiff failed to offer sufficient proof he legitimately owned the confiscated stereo speakers, battery pack, and wires. Consequently, plaintiff's damage claim for these articles is denied.

{¶9} 3) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those

agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶10} 4) However, in the instant claim, defendant acted with court ordered authority to destroy plaintiff's confiscated property. An inmate plaintiff is barred from recovering the value of confiscated property formally forfeited and subsequently destroyed pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for the destroyed envelopes is dismissed.

{¶11} 5) 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.

{¶12} 6) 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.

{¶13} 7) Plaintiff's failure to prove delivery of a set of headphones and greeting cards 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. Consequently, plaintiff's claims for these items are denied.

{¶14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, any headphones or greeting cards were destroyed as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶15} 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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