

[Cite as *Clark v. Southeastern Correctional Inst.*, 2004-Ohio-2897.]

IN THE COURT OF CLAIMS OF OHIO

DAVID CLARK :
Plaintiff :
v. : CASE NO. 2004-01044-AD
SOUTHEASTERN CORRECTIONAL INST.: MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACTS

{¶1} 1) On or about December 17, 2002, plaintiff, David Clark, an inmate incarcerated at defendant, Southeastern Correctional Institution (SCI), was transferred to an outside facility for court proceedings. Plaintiff's personal property was delivered into the custody of SCI staff incident to the transfer.

{¶2} 2) On or about October 2, 2003, plaintiff returned to SCI and discovered his personal property had been lost or stolen while in storage. Consequently, plaintiff filed this claim seeking to recover \$229.53 for the loss of clothing, tobacco products, hygiene products, appliances, and various sundry items. Plaintiff also sought recovery in the amount of \$250.00 for the loss of legal mail, letters, cards, and photographs. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant admitting liability for the loss of plaintiff's property, but asserted damages should be limited to

\$189.12.

{¶4} 4) On March 22, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff accepted the damage assessment of \$189.12, but requested the court grant an additional \$250.00 for the loss of legal mail, letters, cards, and photographs. Plaintiff did not offer proof to establish he possessed these items and that the items were lost or stolen while under defendant's control.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 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.

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

{¶9} 5) Plaintiff has failed to prove, by a preponderance of the evidence, additional property (legal mail, letters, cards, and photographs) were 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.

{¶10} 6) The court finds defendant liable to plaintiff in the

amount of \$189.12, 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.

{¶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 plaintiff in the amount of \$214.12, 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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DRB/RDK/laa
4/28
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