

[Cite as *Wooden v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-4820.]

IN THE COURT OF CLAIMS OF OHIO

MARK WOODEN :
Plaintiff :
v. : CASE NO. 2004-01958-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
REHABILITATIONS AND CORRECTION :
Defendant :
:.....

FINDINGS OF FACT

{¶1} 1) On September 17, 2003, plaintiff, Mark Wooden, an inmate incarcerated at defendant's Richland Correctional Institution (RiCI), was transferred from the institution's general population to a segregation unit. Incident to this transfer, plaintiff's personal property was packed by an RiCI employee, identified as Corrections Officer Wolff.

{¶2} 2) Plaintiff asserted that during the course of the property pack up, a remote control, headphones, mirror, adapter, and a pair of sunglasses were confiscated by RiCI personnel. The confiscated items were stored in the institution vault for a period, but according to plaintiff the items were subsequently discarded by an RiCI staff member.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$65.50, the estimated replacement value of the alleged discarded property. Plaintiff also seeks recovery of the \$25.00 filing fee. The requisite material filing fee was paid.

{¶4} 4) Defendant acknowledged certain articles of property in plaintiff's possession were confiscated and declared contraband on September 17, 2003. Plaintiff was issued a conduct report for possession of contraband which included a set of altered headphones, a broken mirror, an adapter, a pair of sunglasses, and an altered remote control. Defendant admitted these confiscated items were lost or stolen while under the control of RiCI personnel. However, defendant denied liability for any loss claimed. Defendant contended plaintiff did not produce sufficient evidence to establish he rightfully owned any of the articles represented in this complaint.

{¶5} 5) Plaintiff insisted he owned all the confiscated items.¹ Plaintiff submitted a copy of a title for his headphones. Plaintiff explained defendant does not issue titles for remote control devices. Plaintiff did submit a copy of a title for his television set. The trier of fact finds plaintiff was the rightful owner of all the confiscated property items. Insufficient evidence has been presented to prove any of the confiscated property was altered to such an extent as to radically change the characteristic of the property.

CONCLUSIONS OF LAW

{¶6} 1) Plaintiff has no right to pursue a claim for property in which he cannot prove any rightful 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* (1984), 84-09071.

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

¹ Plaintiff filed a response to defendant's investigation report.

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

{¶8} 3) 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.

{¶9} 4) 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) Negligence has been shown in respect to the loss of all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD. Plaintiff is entitled to recover all damages claimed.

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MARK WOODEN	:	
Plaintiff	:	
v.	:	CASE NO. 2004-01958-AD
OHIO DEPARTMENT OF REHABILITATIONS AND CORRECTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
	:

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 \$90.50, 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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RDK/laa
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