

separate occasions that his magazines were subject to exclusion and consequently, withheld from his possession. Defendant further stated plaintiff was sent a Notice of Withholding form which contained option language whereby plaintiff was required to designate a choice to either have the magazines mailed from the institution or authorize the destruction of the printed material. Apparently, plaintiff did not designate any disposition option regarding the printed material and did not send a response to the LeCI mailroom. The three withheld magazines were destroyed by LeCI personnel. Defendant denied any additional magazines were not forwarded to plaintiff. Defendant denied any other magazines intended for plaintiff were destroyed.

{¶ 4} 4) On May 27, 2004, plaintiff filed a response to defendant's investigation report. Contrary to defendant's assertion, plaintiff denied he ever received a Notice of Withholding form regarding his magazines. Plaintiff implied he was never given an opportunity to make a choice concerning the disposition of his withheld magazines.

{¶ 5} CONCLUSIONS OF LAW

{¶ 6} 1) 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.

{¶ 7} 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.

{¶ 8} 3) Plaintiff has no right to pursue a claim for destroyed 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 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* (1985), 84-09071.

{¶ 9} 4) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 10} 5) By refusing to authorize the mailing of the magazines, plaintiff in effect abandoned the withheld printed material and voluntarily relinquished any rights of ownership.

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