[Cite as Cole v. Ohio Dept. of Transp., 2004-Ohio-6148.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH R. COLE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-06071-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	MEMORANDUM DECISION
Defendant		

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FINDINGS OF FACT

 $\{\P 1\}$ 1) On or about November 15, 2003, plaintiff, Joseph Cole, a former inmate, arrived at defendant's Madison Correctional Institution (MaCI) and was ordered to report to the inmate receiving area to retrieve his personal property. Plaintiff related that when he was about to receive his property an unidentified MaCI employee broke his radio by throwing it into a box. Consequently, plaintiff filed this complaint seeking to recover \$19.00, the estimated replacement value of his broken radio. The requisite material filing fee was paid.

 $\{\P 2\}$ 2) Defendant contended plaintiff failed to produce sufficient evidence to prove his radio was broken by a MaCI employee on November 5, 2003. Defendant asserted plaintiff's radio was in good working order when it was returned to him on November 5, 2003.

CONCLUSIONS OF LAW

 $\{\P 3\}$ 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.

 $\{\P 4\}$ 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.

 $\{\P 5\}$ 3) 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.

 $\{\P 6\}$ 4) 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.

 $\{\P, 7\}$ 5) 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.

{¶ 8} 6) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss or damage as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 9} 7) Plaintiff has failed to show any causal connection between any damage to his radio and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), 2003-04236-AD.

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JOSEPH R. COLE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-06071-AD
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
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 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:

Joseph R. Cole 4957 Wake Robin Drive Mentor, Ohio 44060 Plaintiff, Pro se

Gregory C. Trout, Chief Counsel Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, Ohio 43229

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