

[Cite as *Kochalko v. Corr. Reception Ctr.*, 2004-Ohio-7290.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL J. KOCHALKO :  
Plaintiff :  
v. : CASE NO. 2004-08499-AD  
CORRECTIONS RECEPTION CENTER : ENTRY OF DISMISSAL  
Defendant :

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{¶ 1} On August 26, 2004, plaintiff filed a complaint against defendant, Corrections Reception Center. From a review of plaintiff's pleadings and attachments, plaintiff is alleging defendant's agents lost his leg brace while it was in their possession. Plaintiff seeks damages in the amount of \$1,082.00, the cost of the leg brace. Plaintiff submitted the filing fee on September 20, 2004.

{¶ 2} On October 26, 2004, defendant filed a motion to dismiss. Defendant asserts plaintiff's case should be denied for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) and, in the alternative, that defendant mailed the leg brace out of the facility to an address designated by plaintiff and any subsequent loss should not be the responsibility of defendant.

{¶ 3} A review of the pleading and attachments submitted by plaintiff reveal he is asserting a claim of negligence against defendant. Consequently, defendant's assertion that this claim should be denied pursuant to Civ.R. 12(B)(6) is denied.

{¶ 4} However, it is also clear that once an item has been shipped out of the facility, the subsequent loss of the item is not the defendant's responsibility. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Perkins v. Ohio*

*State Reformatory* (1987), 86-10743-AD. In the case at bar, defendant presented evidence from UPS, the carrier utilized to ship plaintiff's leg brace from the facility, that the leg brace was delivered to the address designated by plaintiff on February 4, 2004. Once defendant has mailed property from the institution to an address designated by plaintiff it is no longer responsible for its subsequent loss.

{¶ 5} Plaintiff has not responded to defendant's motion to dismiss with any evidence refuting or questioning defendant's evidence.

{¶ 6} Defendant's motion to dismiss is GRANTED. Plaintiff case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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For Defendant

DRB/laa  
11/24  
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