

[Cite as *Culpepper v. Trumbull Correctional Inst.*, 2006-Ohio-7191.]

IN THE COURT OF CLAIMS OF OHIO

DERRICK CULPEPPER	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09677-AD
TRUMBULL CORR. INST.	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On October 13, 2003, plaintiff, Derrick Culpepper, an inmate incarcerated at defendant, Trumbull Correctional Institution ("TCI"), was transferred to an isolation unit. Plaintiff stated that at some time while he was housed in the isolation unit, the clothing items he was wearing, specifically, a pair of Nike gym shoes, a pair of green jersey shorts, a pair of state pants, and a hooded jacket, were handed over. Plaintiff maintained these confiscated clothing items were placed in a garbage bag for storage and were supposed to be stored with his other property items which were packed at the time he was transferred to the isolation unit.

{¶ 2} 2) On March 25, 2004, plaintiff was released from isolation and regained possession of all his property stored under the custody and care of TCI staff. When plaintiff regained possession of his property he discovered his Nike gym shoes, shorts, pants, and jacket were not among the returned property items. Consequently, plaintiff filed this complaint seeking to recover \$62.83, the estimated replacement cost of his

missing shoes and shorts. Plaintiff contended these clothing items were lost while under the control of TCI personnel.

{¶ 3} 3) Defendant denied liability in this matter. Defendant asserted plaintiff failed to prove he delivered his shoes and shorts to any TCI employee. Defendant acknowledged plaintiff purchased a pair of Nike shoes in February 2002. It appears plaintiff received a second pair of Nike shoes on May 29, 2003. However, defendant suggested plaintiff did not own any Nike shoes on the day he was sent to isolation, October 13, 2003. Defendant explained plaintiff was given an opportunity to inventory his property on October 20, 2003, seven days after he entered isolation, and did not report any missing shoes or shorts. The first time plaintiff mentioned missing property was on March 25, 2004, when he was released from isolation and his property was returned.

{¶ 4} 4) Plaintiff filed a response to defendant's investigation report. He insisted his Nike shoes and shorts, among other clothing, were taken from his possession on October 13, 2003, while he was physically detained in the institution's isolation unit. Plaintiff noted his shoes and shorts, "were given to inmate porters," to send to a storage area, the described "Segregation Units Vault." Plaintiff argued defendant failed to address any issue involving property being stored in the "Segregation Units Vault." Plaintiff contended defendant was negligent in permitting inmates to handle his property that should have been secured by TCI personnel. Plaintiff contended he has offered sufficient proof to establish his shoes and shorts were lost while under defendant's custody.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 6) Plaintiff's failure to prove delivery of certain items of property to defendant constitutes a failure to show

imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 11} 7) Plaintiff has failed to prove, by a preponderance of evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

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DERRICK CULPEPPER :

Plaintiff :

v. :

CASE NO. 2005-09677-AD

TRUMBULL CORR. INST. :

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:

Derrick Culpepper, #246-398
5701 Burnett Road
Leavittsburg, Ohio 44430

Plaintiff, Pro se

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

For Defendant

RDK/laa

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