

of gym shorts (one Nike brand), one jWIN CD player, one set of Sony headphones, one jWIN radio/cassette player, one beard trimmer, five compact discs, eight cassette tapes, one adaptor, one pair of Panasonic headphones, one set of ear buds, a pair of weight lifting gloves, one mug, one mirror, pajamas, one pair of undershorts, legal transcripts and police reports, two photo albums containing fifty-six photographs, commissary purchases made on December 1, 2004, consisting of food and tobacco products, and commissary purchases made on December 7, 2004, consisting of food, soap, a card, and an envelope. Plaintiff claimed property worth \$1,098.37 has been missing since December 7, 2004.

{¶ 4} 4) Plaintiff filed this complaint alleging his property was either not packed by TCI personnel or was lost while under the control of TCI employees. Plaintiff seeks \$1,098.37 in damages. The filing fee was paid.

{¶ 5} 5) Defendant admitted liability in the amount of \$29.95 for the loss of plaintiff's blanket. Defendant maintained additional property items plaintiff reported were missing when he filed a grievance on January 20, 2005, may have been recovered or never packed. The reported missing property included food and tobacco products, soap, a beard trimmer, five towels, a greeting card, an envelope, a lamp, a fan, and a blanket. Defendant submitted a copy of plaintiff's property inventory dated December 7, 2004. This inventory records plaintiff's fan, light, soap, and blanket were packed. No food, tobacco products, greeting cards, or envelope are listed on the

December 7, 2004, inventory. Defendant presumably did not pack these articles incident to plaintiff's transfer to segregation. Plaintiff did not complain about any additional missing property other than the items listed on the January 20, 2005, grievance. Defendant denied losing any property (other than the blanket) which was packed on December 7, 2004. Defendant denied receiving delivery of any property not listed on the December 7, 2004, property inventory.

{¶ 6} 6) Plaintiff responded contending his property was lost by NCCI personnel at some period between the time of the December 7, 2004, pack-up and the date plaintiff was transferred to TCI, February 11, 2005. Copies of plaintiff's property inventories dated December 7, 2004, and February 11, 2005, were submitted. Some property items listed on the December 7, 2004, inventory are not recorded on the February 11, 2005, inventory. A blanket, a CD player, six compact discs, three pairs of gym shorts, six t-shirts, and eleven bars of soap are listed among the packed items on the December 7, 2004, inventory. The February 11, 2005, inventory lists four t-shirts, one pair of gym shorts, five compact discs, and three bars of soap. No blanket or CD player is listed on this inventory. The trier of fact finds a blanket, a CD player, two t-shirts, two pairs of gym shorts, one compact disc, and eight bars of soap were lost while under the control of NCCI staff. All other property items claimed by plaintiff were either never packed by defendant or packed and ultimately returned to plaintiff's possession.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 5) In order to recover against a defendant in 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.

{¶ 12} 6) Plaintiff's failure to prove delivery of certain property items 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.

{¶ 13} 7) In respect to the loss of a blanket, a CD player, one compact disc, two t-shirts, two pairs of gym shorts, and eight bars of soap, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 14} 8) The court finds defendant liable to plaintiff in the amount of \$150.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶ 15} 9) Plaintiff has failed to prove, by a preponderance of the evidence, any additional items of his property were lost or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

IN THE COURT OF CLAIMS OF OHIO

ALONZO L. BONNER, SR. :

Plaintiff :

v. :

CASE NO. 2005-10616-AD

NORTH CENTRAL CORRECTIONAL
INSTITUTION :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

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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 \$175.00, 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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