

[Cite as *Dawson v. Ohio Dept. of Corr.*, 2006-Ohio-7246.]

IN THE COURT OF CLAIMS OF OHIO

LARRY DAWSON :
 :
 Plaintiff :
 :
 v. : CASE NO. 2006-01467-AD
 :
 OHIO DEPT. OF CORRECTIONS : MEMORANDUM DECISION
 :
 Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On June 3, 2004, property owned by plaintiff, Larry Dawson, an inmate, was packed and inventoried by employees of defendant's Trumbull Correctional Institution ("TCI"), in preparation for transferring plaintiff and his property to defendant's Southern Ohio Correctional Facility ("SOCF"). Included in the property packed by TCI personnel was plaintiff's television set.

{¶ 2} 2) On June 7, 2004, upon his arrival at SOCF, plaintiff's property was again inventoried. The SOCF pack-up officer noted on plaintiff's property inventory sheet that his television set was being placed in long term storage due to the fact the set was missing a volume control button. The pack-up officer wrote, "TV altered button missing." Plaintiff maintained his television set was not damaged in any way when the device was handed over to TCI personnel for transport to SOCF. Plaintiff suggested the television was either damaged in transport to SOCF or after it arrived there.

{¶ 3} 3) Consequently, plaintiff filed this complaint seeking

to recover \$125.00, the complete cost of a replacement television set, plus \$25.00 for filing fee reimbursement. The filing fee was paid.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant contended plaintiff failed to produce sufficient evidence to prove his television was damaged while in the custody and control of defendant's employees.

{¶ 5} 5) Plaintiff responded to defendant's investigation report by insisting his television was damaged by defendant. Plaintiff argued if his set was damaged when he delivered it to TCI personnel, the set would have been withheld and not forwarded to SOCF.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

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

{¶ 11} 6) Plaintiff as failed to show any causal connection between any damage to his television set 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*, 2003-04236-AD, 2003-Ohio-3615.

IN THE COURT OF CLAIMS OF OHIO

LARRY DAWSON :

Plaintiff :

v. :

CASE NO. 2006-0147-AD

OHIO DEPT. OF CORRECTIONS :

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:

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Plaintiff, Pro se

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Case No. 2006-01467-AD

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MEMORANDUM DECISION

RDK/laa

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