

[Cite as *Camella v. Ohio Veterans Home*, 2006-Ohio-7258.]

IN THE COURT OF CLAIMS OF OHIO

FRANK CAMELLA, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2006-01491-AD
OHIO VETERANS HOME	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Frank Camella, is a resident at defendant, Ohio Veterans Home. On December 20, 2005, plaintiff, Antoinette Camella, the spouse of Frank Camella, made her daily visit to her husband at defendant's facility. Antoinette Camella stated that when she saw her husband on December 20, 2005, she noticed he was not wearing his eyeglasses. Antoinette Camella noted Frank Camella suffers from cognitive impairment and consequently, must rely on defendant's personnel for all his needs, including caring for his eyeglasses.

{¶ 2} 2) Frank Camella's eyeglasses have not been found and consequently, plaintiffs filed this complaint seeking to recover \$270.30, the cost of replacement eyewear. Plaintiffs have maintained defendant should bear liability for the loss of the eyeglasses. The filing fee was paid.

{¶ 3} 3) Defendant acknowledged having a "legal and moral obligation to take reasonable measures to safeguard the personal property of its residents." However, defendant denied liability in this matter. Defendant contended it is not charged with a

duty to watch over resident's property constantly on a twenty-four hour basis. Defendant suggested Frank Camella may have discarded his glasses while experiencing confusion or that glasses could have been taken by another resident. Furthermore, defendant provided a copy of its resident contract signed and entered into by both plaintiffs. This contract clearly states: "Under no circumstances will the Home (defendant) accept liability for personal property left in the possession of the resident." Both plaintiffs agreed to this term contained in the contract.

#### CONCLUSIONS OF LAW

{¶4} Defendant is under a duty to exercise ordinary care to protect personal property delivered into its possession. *Leech v. Ohio State University Hospital* (1989), 89-07875-AD; *Ahmed v. Ohio State Hospital* (1999), 97-10812-AD. However, plaintiffs have the burden of proving, by a preponderance of the evidence, that they suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶5} Although strict rules of evidence do not apply in administrative determinations, plaintiffs must prove their case by a preponderance of the evidence. *Underwood v. Dept. of Rehabilitation and Correction* (1985), 84-04053-AD. "It is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining their claim. If the evidence so produced furnishes only a basis for a choice, among different possibilities as to any issue in the case, they fail to sustain such burden." (paragraph three of

the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.) *Kata v. Second National Bank of Warren* (1971), 26 Ohio St. 2d 210, Syllabus 2.

{¶ 6} Plaintiffs have failed to submit any evidence to show defendant received delivery on December 20, 2005, of a pair of eyeglasses owned by Frank Camella. This failure to prove delivery constitutes 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. Consequently, plaintiffs' claim is denied.

IN THE COURT OF CLAIMS OF OHIO

FRANK CAMELLA, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2006-01491-AD
OHIO VETERANS HOME	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Frank Camella  
Antoinette Camella  
4612 Venice Hts. Blvd. #156  
Sandusky, Ohio 44870

Plaintiffs, Pro se

Gregory J. Kowalski  
Chief Legal Counsel  
Ohio Veterans Home Agency  
3416 Columbus Avenue

For Defendant

Sandusky, Ohio 44870

RDK/laa

8/22

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