

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOHN L. BRANDON, JR.

Plaintiff

v.

OHIO DEPT. OF REHABILITATION
AND CORRECTIONS

Defendant

Case No. 2006-02714-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, John L. Brandon, Jr., an inmate incarcerated at defendant's London Correctional Institution ("LoCI"), stated he delivered several items of his personal property to LoCI mailroom staff on November 10, 2005, to be mailed to a designated address. Plaintiff asserted the property he delivered was never mailed and he assumed the items were lost or stolen while under the control of LoCI personnel. Plaintiff related the following property was missing: one fan, one blue sweatsuit, a pair of blue sweatpants, three pairs of gym shorts, three or four pairs of undershorts, one pair of long underwear, two blue bath towels, one pair of Timberland boots, three plastic bowls with lids, three or four books, and "numerous important papers."

{¶ 2} 2) Earlier, on October 24, 2005, plaintiff packed all of his personal property and delivered the items to LoCI employees in preparation for a transfer from LoCI to defendant's Noble Correctional Institution. Plaintiff pointed out he subsequently discovered on November 10, 2005, that several articles of property he had packed on October 24, 2005, were missing and presumed lost. Plaintiff noted the alleged missing items included: one box of Q-tips, four AA batteries, one blue blanket, one green blanket, one container of iced tea drink, one container of grape drink, one container of hot chocolate, pink lemonade drink, breakfast drink, two boxes of cubed sugar, a bag of hard candy, two bags of assorted candy, and two bottles of oil.

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$202.64, the estimated replacement value of the alleged missing property, which plaintiff claims was lost or stolen while under the control of LoCI personnel. Payment of the filing fee for instituting actions was waived.

{¶ 4} 4) Defendant denied plaintiff was ordered to mail out any property items from LoCI on or about November 10, 2005. Defendant denied any LoCI mailroom staff received any property from plaintiff for mailing. However, defendant admitted liability for the loss of plaintiff's boots, three pairs of gym shorts, long underwear, and one towel. Defendant suggested reasonable damages for these admitted lost articles should be set at \$50.00. Defendant denied ever receiving delivery of the remaining property items claimed by plaintiff. Defendant submitted a copy of an inventory of plaintiff's property compiled by LoCI employees on October 24, 2005. Additionally, defendant submitted a copy of plaintiff's property inventory compiled on November 14, 2005, when he was transferred to the Noble Correctional Institution. Papers, undershorts, one towel, and a pair of sweatpants are noted on both inventories. A towel, a pair of boots, a blanket (state issue), gym shorts, and long underwear are listed on the October 24, 2005, inventory, but are not listed on the November 14, 2005, inventory. None of the remaining claimed items are listed on either inventory. The claim for any loss of state issue property such as the blanket is impermissible and shall

not be further addressed.

CONCLUSIONS OF LAW

{¶ 5} 1) Plaintiff's claim for a fan, sweatsuit, bowls, books, Q-tips, batteries, one blanket, drinks, sugar, candy, and oil is denied. Plaintiff's failure to prove delivery of these 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,

{¶ 6} 2) 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} 3) 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} 4) 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} 5) However, negligence on the part of defendant has been shown in respect to the loss of a pair of boots, three pairs of gym shorts, long underwear, and one towel. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 10} 6) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 495 N.E. 2d 462. Defendant is liable to plaintiff in the amount of \$75.00.

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

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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 \$75.00. 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:

John L. Brandon, Jr.
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Plaintiff, Pro se

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RDK/laa

10/19

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