

[Cite as *Vargas v. Ohio State Penitentiary*, 2006-Ohio-7251.]

IN THE COURT OF CLAIMS OF OHIO

RICHARD VARGAS	:	
Plaintiff	:	
v.	:	CASE NO. 2006-03036-AD
OHIO STATE PENITENTIARY	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On December 21, 2005, employees of defendant, Ohio State Penitentiary ("OSP"), conducted a shakedown search, including the cell of plaintiff, Richard Vargas, an inmate.

{¶ 2} 2) Plaintiff asserted his television set was damaged by OSP staff during the course of the shakedown search. Plaintiff related he discovered his television set laying screen side down against the metal springs and iron cross bars of his bunk. Plaintiff explained the channel changing buttons on the set were pressed in and would not work properly.

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$130.00, the replacement cost of a new television set. The television set plaintiff owns was purchased in 1999 at a cost of \$130.00. The filing fee was paid.

{¶ 4} 4) Defendant denied plaintiff's television was damaged during a December 21, 2005, shakedown search. Defendant stated, "the on/off button on the television was stuck due to an unidentified sticky substance." Defendant asserted other than

this problem the set is in proper working order and remains in plaintiff's possession. Defendant argued plaintiff has failed to prove his television set was damaged by OSP personnel.

{¶ 5} 5) Plaintiff responded to defendant's investigation report insisting defendant's employees broke his television set.

#### 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 has 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.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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:

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Plaintiff, Pro se

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For Defendant

Case No. 2006-03036-AD

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MEMORANDUM DECISION

Columbus, Ohio 43229

RDK/laa

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