

[Cite as *Nichols v. Ohio State Penitentiary*, 2007-Ohio-1929.]

# 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](http://www.cco.state.oh.us)

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WALLACE NICHOLS

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2006-06612-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) On June 27, 2006, plaintiff, Wallace Nichols, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), transferred from cellblock C to cellblock A. Incident to this transfer, plaintiff packed his own property items.

{¶2} 2) Plaintiff recalled he and his property were transferred separately to his new cell assignment. Plaintiff related his property, “was then searched outside my presence,” by an OSP employee, C/O Narotsky. Plaintiff claimed he and C/O Narotsky do not get along and a past incident had occurred between them. Plaintiff maintained that when he finally regained physical possession of his property he discovered four compact discs were missing.

{¶3} 3) Plaintiff filed this complaint alleging defendant is responsible for the loss of his four compact discs. Plaintiff seeks recovery of \$52.00, the replacement value of the alleged missing compact discs, plus \$25.00 for filing fee reimbursement. Plaintiff also requested, “[e]xpenses incurred in this action as a result of Defendant’s actions, in an amount not to exceed \$20.” The filing fee was paid.

{¶4} 4) Defendant denied any liability in this matter contending plaintiff failed to offer sufficient evidence to prove his claimed missing property was lost or stolen while under the control of OSP staff.

{¶5} 5) Plaintiff filed a response. In his response plaintiff suggested he should receive the monetary relief sought due to the fact a property inventory listing was not compiled when he transferred on June 27, 2006. Plaintiff implied his compact discs were confiscated by C/O Narotsky.

## CONCLUSIONS OF LAW

{¶6} 1) 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.

{¶7} 2) 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.

{¶8} 3) In order to recover against a defendant in a 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

Case No. -AD	- 3 -	MEMORANDUM DECISION
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essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶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'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.

{¶11} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost or stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

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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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RDK/laa  
3/6  
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