

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

DONTE L. JONES

Case No. 2007-02891-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO DEPT. REHABILITATION AND
CORRECTION

Defendant

FINDINGS OF FACT

{¶1} 1) On or about September 9, 2006, plaintiff, Donte L. Jones, an inmate incarcerated at defendant's North Central Correctional Institution ("NCCI"), was transferred from the institution's general population to a segregation unit. Plaintiff's personal property was inventoried, packed and delivered into the custody of NCCI staff incident to his transfer.

{¶2} 2) Plaintiff recalled he retrieved his property from defendant's personnel on or about September 22, 2006, and discovered his television set was not among the returned property. Consequently, plaintiff filed this complaint seeking to recover \$134.99, the complete estimated replacement cost of a new television set. Plaintiff alleged his set was lost while under the control of NCCI staff sometime between September 9, and September 22, 2006. Plaintiff was not required to pay a filing fee to pursue this action.

{¶3} 3) Plaintiff submitted a copy of his property inventory dated September 9, 2006. The inventory lists one television set was packed by an NCCI employee identified as Garnow. Plaintiff submitted a written statement signed by NCCI employee, C/O Larry Dean Garnow. In this statement, C/O Garnow swore he packed plaintiff's television set and all his belongings on September 9, 2006. Garnow recorded he sent

all packed property including the television set to the NCCI property vault.

{¶4} 4) Defendant denied liability in this matter based on the contention plaintiff could not produce documentation he actually owned a television set on September 9, 2006. Defendant asserted previous property records of plaintiff's property do not list a television set. Defendant further asserted plaintiff could not produce a title or other indicia of ownership of a television set. Defendant's records show plaintiff purchased a KTV television set on December 12, 2003, and reported it stolen on December 1, 2004. Apparently, the set was never recovered. Defendant related there is no record plaintiff purchased a replacement set. Additionally, defendant maintained NCCI vault officer, Foreman did not recall receiving a television set among plaintiff's packed property items on September 9, 2006. There was no listing of a television set on the NCCI "Overnight Vault Log" for September 9, 2006. Defendant denied plaintiff was the rightful owner of a television set. Defendant denied receiving delivery of a television set owned by plaintiff.

{¶5} 5) Plaintiff did not file a response.

CONCLUSION 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) 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. However, plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶9} 4) It was held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is

permitted when such property is confiscated or lost. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Plaintiff failed to offer sufficient proof he owned a television set on September 9, 2006. See *Canitia v. Trumbull Correctional Institution*, Ct. of Cl. No. 2003-05739-AD, jud, 2003-Ohio-5551. Consequently, plaintiff's claim is denied since he has not proven he owned a television set on September 9, 2006.

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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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
11/30
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