

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

JESSE L. PAIGE

Plaintiff

v.

OHIO DEPT. REHAB. CORR.

Defendant

Case No. 2007-08210-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} Plaintiff, Jesse L. Paige, an inmate, filed this complaint alleging several items of his personal property were lost when he was transferred from the general population at Madison Correctional Institution (“MaCI”) to a segregation unit on November 4, 2006. Specifically, plaintiff claimed his beard trimmer, surge protector, boots, blanket, sweat suit, wash cloth, set of headphones, television remote control, adapter, and four compact discs were lost after his property had been forwarded from MaCI to Mansfield Correctional Institution.

{¶ 2} Plaintiff filed this complaint seeking to recover \$193.26, the estimated replacement value of his alleged missing property. Payment of the filing fee was waived.

{¶ 3} Defendant explained plaintiff was transferred to a segregation unit at MaCI in November 2006 and subsequently filed a grievance on January 8, 2007 claiming property loss incident to this transfer. Defendant admitted a pair of boots, a surge protector and one compact disc possessed by plaintiff were lost while under the control

of MaCI staff. However, defendant denied liability for the loss of these articles based on the contention that plaintiff has not produced evidence sufficient to prove he actually owned the lost property. Defendant asserted the remainder of the property items claimed were either recovered or proof of possession was not offered. Defendant denied liability for any loss in this matter.

{¶ 4} Defendant submitted copies of multiple property inventories compiled at various times when plaintiff's property was packed. The earliest inventory dated November 29, 2004 was compiled when plaintiff was initially transferred to MaCI. Among the property pertinent to this claim, the November 29, 2004 inventory lists beard trimmers, a blanket, boots, a sweat suit, nine tapes, which the court construes to include compact discs, a "power tap," which the court construes to be a surge protector. Headphones, remote, adapter, and wash cloths are not listed. Another submitted property record dated August 31, 2006 lists a pair of sweat pants, headphones, two wash cloths, and a blanket. No other property claimed is listed. A copy of plaintiff's November 4, 2006 property inventory was submitted. This property record was compiled when plaintiff was transferred to a segregation unit. Of the items claimed the November 4, 2006 inventory lists two wash cloths. No other items relevant to this claim are listed. Defendant filed a copy of an inventory dated December 19, 2006 and compiled when plaintiff was transferred from MaCI to the Lebanon Correctional Institution. This inventory lists one wash cloth and a set of headphones, but does not list any other items listed in plaintiff's complaint.

{¶ 5} Plaintiff filed a response insisting he owned all the alleged missing property claimed. Plaintiff recalled he obtained all property through legitimate means; either by receiving items from family members or by purchase.

CONCLUSIONS OF LAW

{¶ 6} 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} 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} 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} Plaintiff's failure to prove delivery of a remote, sweat shirt, three compact discs, blanket, beard trimmer, and adapter 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. Plaintiff's claim of these items is denied.

{¶ 10} Plaintiff has failed to show any causal connection between any loss of headphones 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), Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615.

{¶ 11} Plaintiff has failed to prove, by a preponderance of the evidence, he sustained the loss of headphones as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 12} The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds plaintiff provided sufficient proof he owned all the property claimed with the exception of an adapter.

{¶ 13} Negligence on the part of defendant has been shown in respect to the loss of a pair of boots, one compact disc, one wash cloth, and a surge protector. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 14} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462.

{¶ 15} Plaintiff has sustained damages in the amount of \$50.00.

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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 \$50.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jesse L. Paige, #363-129
1150 N. Main Street
P.O. Box 788
Mansfield, Ohio 44901

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa

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