

[Cite as *Trawick v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-5473.]

IN THE COURT OF CLAIMS OF OHIO

MARK TRAWICK	:	
Plaintiff	:	
v.	:	CASE NO. 2003-05356-AD
DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶1} 1) On October 28, 2002, plaintiff, Mark Trawick, an inmate incarcerated at defendant, Ohio State Penitentiary (OSP), delivered his personal property into the custody of defendant's staff.

{¶2} 2) On March 21, 2003, plaintiff regained possession of his property and discovered his fan, lamp, sweat pants, tobacco products, t-shirts, and coffee were not among the returned items.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$61.90, the estimated replacement value of his missing property, which he claims was lost or stolen while under the control of OSP personnel.

{¶4} 4) Defendant denied any liability in this matter. Defendant contended plaintiff has failed to establish his property was lost or stolen while under the care of OSP employees.

{¶5} 5) On August 27, 2003, plaintiff filed a response to the defendant's investigation report. Plaintiff insisted his property was lost or stolen while under defendant's control. Sufficient evidence has been submitted to support plaintiff's

allegations.

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) 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.

{¶9} 4) Negligence on the part of defendant has been shown in respect to the loss of the property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD. Defendant is liable to plaintiff in the amount of \$61.90.

{¶10} 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 \$61.90. 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:

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