



defendant denied receiving this envelope containing the cash. Plaintiff pointed out the sealed envelope containing his money was placed in his property bag and the property bag was forwarded to CRC personnel. CRC maintained no envelope containing cash was among the items in the property bag delivered by Transcor. Defendant specifically denied any agents of Transcor delivered any of plaintiff's money in any form to CRC. Defendant noted CRC employees "did receive money from Transcor staff for three of the other five inmates transferred with plaintiff" to defendant's facility. Defendant insisted there has been no showing CRC personnel physically possessed any of plaintiff's cash incident to his November 1, 2004, transfer.

{¶ 3} Defendant submitted a copy of a money order for \$500.00 purchased on October 28, 2004, listing plaintiff as payee. The money order bears plaintiff's signature as endorsement and is also endorsed by Jeffrey Warnement, who apparently cashed the money order on November 5, 2004. Jeffrey Warnement was formerly incarcerated with plaintiff at the Lima Correctional Institution and had been designated by plaintiff as an approved visitor, but was subsequently removed from plaintiff's visitor list when defendant began investigating plaintiff's allegations concerning misplaced money. Defendant suggested the \$573.72 in cash plaintiff claimed was lost by CRC staff was actually used to purchase money orders that were delivered to Jeffrey Warnement. Defendant denied any cash belonging to plaintiff was delivered to CRC personnel.

{¶ 4} In his response to defendant's investigation report, plaintiff insisted his money was delivered to CRC staff, despite the fact CRC denies receiving any money intended for plaintiff. Plaintiff denied having any knowledge regarding the purchase of or any negotiation of a money order cashed by Jeffrey Warnement. Plaintiff asserted Jeffrey Warnement submitted an application to be

included on plaintiff's visitor list, but maintained the application was summarily and immediately denied by defendant. Plaintiff contended he has submitted sufficient proof to show CRC staff received and then misplaced his cash.

#### CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 5) 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 essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 10} 6) Plaintiff's failure to prove delivery of cash to



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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