

# 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

JESSICA HORTON

Plaintiff

v.

OHIO DEPARTMENT OF YOUTH  
SERVICES

Defendant

Case No. 2007-03170-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Jessica Horton, a youth offender, formerly under the custody of defendant, Department of Youth Services (“DYS”), and housed at the Scioto Juvenile Correctional Facility (“SJCF”), claimed her personal property was destroyed by SJCF staff. Plaintiff stated a box containing her eyeglasses, scrapbook, personal papers, and thirty-seven photographs was scheduled to be picked up by her father on or about August 9, 2004. According to plaintiff, the box containing her personal property items was “discarded” by SJCF personnel “with complete disregard.” Plaintiff alleged her personal property items were deliberately thrown away and implied SJCF personnel acted without any authority to disposed of any of her property.

{¶2} 2) Consequently, plaintiff filed this complaint seeking to recover \$2,500.00, the estimated value of her alleged destroyed property items. The filing fee was paid.

{¶3} 3) Defendant denied any SJCF personnel confiscated any property from plaintiff. Defendant denied any SJCF personnel destroyed any property that plaintiff owned. Defendant has no record plaintiff ever owned or possessed the property items claimed while she was under the custody of DHS.

{¶4} 4) Plaintiff did not produce any evidence to establish she possessed the

property items claimed while she was housed at SJCF. Also, plaintiff did not provide any evidence other than her own assertion to show any of her property was confiscated and destroyed by SJCF staff.

#### CONCLUSIONS OF LAW

{¶15} 1) This court has previously observed “R.C. 5139.01(A)(3) expressly provides that “\*\*\* the department [of youth services] has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control \*\*\* the children over which defendant maintains legal custody.” *Shover v. Ohio Dept. of Youth Serv.* (Sept. 14, 1994), Court of Claims No. 93-04176. R.C. 5139.01(A)(3) also mandates defendant “provide the child with food, clothing, shelter, education, and medical care.” Implied in this statutory duty to protect is the duty to protect the permissible personal property belonging to an incarcerated youth.

{¶16} 2) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the Department of Rehabilitation and Correction does not have the liability of an insurer, with respect to inmate property, but that it does have the duty to make “reasonable attempts to protect, or recover” such property. Furthermore, the Department of Rehabilitation and Correction has a duty of using the same degree of care with inmate property as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD. The court concludes, in the instant claim, defendant has the same duty of care to the property of youth offenders under its custody that the Department of Rehabilitation and Correction owes to incarcerated inmates. *Ross v. Dept. of Youth Services*, 2005-04357-AD, 2006-Ohio-333.

{¶17} 3) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. However, a plaintiff has no right to pursue a claim for lost or destroyed property in which she cannot prove any right of ownership. *DeLong v. Department of*

*Rehabilitation and Correction* (1988), 88-06000-AD; See also *Mitchell v. Chillicothe Correctional Inst.*, 2005-07038-AD, 2005-Ohio-7092.

{¶8} 4) Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶9} 5) 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} 6) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining her claim. If her evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, she fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶11} 7) Plaintiff's failure to prove delivery of any property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to destroyed property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶12} 8) Plaintiff has failed to prove, by a preponderance of the evidence, she suffered any loss 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

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa

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