

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

LARRY NOSACK

Plaintiff

v.

OHIO VETERANS HOME

Defendant

Case No. 2007-07094-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Larry Nosack, is the son of Anthony P. Nosack, a veteran resident at defendant, Ohio Veterans Home (“OVH”) in Sandusky. Plaintiff, who has power of attorney for his father, contended a pair of hearing aids owned by his father were lost while under the control of OVH personnel on or about September 26, 2006. Plaintiff explained that during the first week of September 2006, he became aware that his father’s hearing aids were in need of repair. Plaintiff further explained the hearing aids were delivered to an OVH employee identified as Terri who then sent the aids to an outside facility for repair. Plaintiff related he was informed the repair cost totaled \$300.00 and he consequently drafted a check from his father’s trust account (copy submitted) payable to OVH for the amount specified. Plaintiff maintained the hearing aids were lost after being shipped for repairs. According to plaintiff, the hearing aids “just disappeared in the system.”

{¶ 2} 2) Plaintiff has implied the hearing aids were lost as a result of negligent acts or omissions on the part of OVH staff. Therefore, plaintiff filed this complaint seeking to recover \$2,500.00, the estimated replacement value of the pair of hearing aids. Plaintiff submitted a document from University Hearing Professionals showing the hearing aids were purchased on November 19, 2004 for \$1,300.00. Plaintiff claimed the \$1,300.00 purchase price represented the cost of one hearing aid not a set of two. The

purchase contract contained a warranty provision for repairs. Plaintiff submitted the filing fee.

{¶ 3} 3) Defendant acknowledged receiving delivery of one and only one hearing aid owned by Anthony Nosack which was then forwarded to the office of audiologist, Dr. Roberts & Associates, Inc. for repair. Defendant related the hearing aid was received at the office of Dr. Roberts & Associates on August 4, 2006. After being repaired the hearing aid was picked up by an OVH employee on September 11, 2006. Defendant maintained the repaired hearing aid was then returned to the possession of Anthony Nosack, by OVH staff. Although defendant does not dispute the contention that both hearing aids owned by Anthony Nosack were subsequently lost, defendant denied the hearing aids were lost while under the control of OVH personnel. Defendant suggested “the hearing aids were lost, misplaced, or inadvertently thrown away at the same time” by someone other than an employee of OVH. Defendant contended plaintiff has failed to offer sufficient evidence to establish the hearing aids were lost as a proximate cause of negligence on the part of OVH personnel.

{¶ 4} 4) Defendant submitted a statement from the office administrator, Cheryl Esian, at Dr. Roberts & Associates regarding Anthony Nosack’s hearing aid. Esian noted she reviewed pertinent records and these records show the office of Dr. Roberts & Associates received from OVH one hearing aid in need of repair. The received hearing aid, owned by Anthony Nosack, was then sent to a repair lab and returned to the office of Dr. Roberts & Associates on August 23, 2006. According to Esian when the repaired hearing aid was returned, OVH was contacted for pick-up.

{¶ 5} 5) Defendant filed an additional statement from OVH social worker Terri Anthony regarding her recollections of the situation involving the repair of Anthony Nosack’s hearing aid. Terri Anthony stated the hearing aid was delivered to the office of Dr. Roberts & Associates by an OVH employee on August 4, 2006 and the repaired hearing aid was picked-up by an OVH employee on September 11, 2006. In her statement, Ms. Anthony outlined the OVH internal procedure followed for delivery and

repair of a hearing aid owned by an OVH resident. Ms. Anthony stated this procedure involves an OVH employee picking up an OVH resident's repaired hearing aid from the audiologist and then forwarding the repaired device to "the Police Department," who in turn notifies the appropriate OVH nursing staff. In regard to the next step in the return procedure, Ms. Anthony explained the repaired hearing aid is then picked up from the "Police Department" by a nursing staff member assigned to the particular unit where the resident who owns the device lives. Then, according to Ms. Anthony, the hearing aid is physically delivered to the owner by the OVH nursing staff member who picked up the hearing aid from the "Police Department." Ms. Anthony related:

{¶ 6} "To the best of my knowledge, the hearing aid in question was then delivered to Mr. Nosack by an Ohio Veterans' Home staff member, whose identity is unknown to me, in accordance with the home's normal procedures."

{¶ 7} 6) Plaintiff filed a response observing both hearing aids owned by Anthony Nosack were in need of repair and both are missing. Plaintiff insisted the one repaired hearing aid that was sent back to OVH was lost or misplaced by OVH staff. Plaintiff asserted the repaired hearing aid was never received by Anthony Nosack. Plaintiff requested his damage claim be amended to reflect the \$300.00 cost of repair for one hearing aid, plus \$625.00, the replacement cost for one hearing aid. Plaintiff did not produce any evidence other than his own assertion to show the repaired hearing aid was lost or misplaced while under the control of OVH personnel.

CONCLUSIONS OF LAW

{¶ 8} 1) In order to establish a prima facie case for breach of a bailment duty, the plaintiff bailor must prove 1) a contract of bailment, 2) delivery of the bailed property to the defendant bailee, and 3) failure by the bailee to return the bailed property. *David v. Lose* (1966), 7 Ohio St. 2d 97, 99, 36 O.O. 2d 81, 218 N.E. 2d 442, 444.

{¶ 9} 2) Defendant is under a duty to exercise ordinary care to protect personal property delivered into its possession. *Leech v. Ohio State University Hospital* (1989), 89-07875-AD; *Ahmed v. Ohio State University Hospitals* (1999), 97-10812-AD.

However, 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.

{¶ 10} 3) Although strict rules of evidence do not apply in administrative determinations, plaintiff must prove his case by a preponderance of the evidence. *Underwood v. Dept. of Rehabilitation and Correction* (1985), 84-04053-AD. "It is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice, among different possibilities as to any issue in the case, he fails to sustain such burden." (paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.) *Kata v. Second National Bank of Warren* (1971), 26 Ohio St. 2d 210, 55 O.O. 2d 458, 271 N.E. 2d 292, syllabus two. Plaintiff has failed to prove, by a preponderance of the evidence, that OVH staff failed to return Anthony Nosack's repaired hearing aid. Consequently, plaintiff has failed to prove defendant breached any bailment duty. Therefore, plaintiff's claim is denied.

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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
4/11
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