

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

JOHN W. LEWIS

Plaintiff

v.

LONDON CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-02758-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, John W. Lewis, an inmate incarcerated at defendant, London Correctional Institution (“LoCI”), asserted his reading glasses, envelope, and can of loose tobacco were lost by LoCI staff incident to a medical transfer on or about August 25, 2008. Plaintiff filed this complaint seeking damages in the amount of \$88.67. Payment of the filing fee was waived.

{¶ 2} 2) Defendant filed an investigation report admitting liability for the loss of plaintiff’s reading glasses and envelope. However, defendant denied liability for the can of tobacco. Defendant contended plaintiff’s property record compiled incident to his transfer does not reflect any tobacco products were delivered to LoCI staff. Furthermore, defendant asserted plaintiff failed to provide any proof he actually purchased any tobacco products prior to August 25, 2008. Defendant acknowledged plaintiff suffered damages for property loss in the amount of \$80.48.

CONCLUSIONS OF LAW

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 5) Plaintiff failed to offer sufficient proof he owned a can of tobacco on August 25, 2008. See *Canitia v. Trumbull Correctional Institution*, Ct. of Cl. No. 2003-05739-AD, jud, 2003-Ohio-5551.

{¶ 8} 6) Plaintiff’s failure to prove delivery of the claimed missing tobacco 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.

{¶ 9} 7) Negligence on the part of defendant has been shown in respect to the issue of property protection of plaintiff’s glasses and envelope. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD. Plaintiff has proven damages in the amount of \$80.48.

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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 \$80.48. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
8/7
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