

[Cite as *Still v. Marion Corr. Inst.*, 2002-Ohio-4646.]

IN THE COURT OF CLAIMS OF OHIO

KENNETH V. STILL, #215-635 :
P.O. Box 57 :
Marion, Ohio 43302 : Case No. 2001-10778-AD

Plaintiff : MEMORANDUM DECISION

v. :

MARION CORRECTIONAL INST. :

Defendant :

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} 1) On or about July 10, 2001, plaintiff, Kenneth V. Still, an inmate incarcerated at defendant, Marion Correctional Institution, was transferred from the institution's general population to a disciplinary confinement unit.

{¶2} 2) Incident to his transfer plaintiff's personal property was packed and delivered into the custody of defendant's staff. Plaintiff has suggested his property was either left unattended or mixed with the property of his cellmate and consequently several items are missing. Plaintiff indicated defendant failed to pack his toothpaste, toothbrush, toothbrush holder, bar of soap, watch, t-shirt, three photographs, earphone, face towel, and a "Black Orchid Bergamot."

{¶3} 3) Additionally, plaintiff explained his cookies, drink mix, coffee, and hair grease were lost while he was housed in the disciplinary confinement unit and his property was stored in defendant's vault.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$49.10, the total estimated value of all alleged missing property items. Plaintiff submitted the filing fee with the complaint.

{¶5} 5) Defendant filed an investigation report explaining plaintiff was transferred to a segregation unit on September 13, 2000. Plaintiff has asserted his loss occurred on and after July 10, 2001 incident to a transfer to a disciplinary confinement unit.

Defendant admitted liability for the loss of plaintiff's Black Orchid Bergamot, t-shirt, photographs, face towel, cookies, and hair grease. Defendant has denied the remaining property items claimed were lost while under the control of its personnel.

{¶6} 6) Plaintiff filed a response withdrawing his claim for the loss of his watch indicating this item was recovered. However, plaintiff reasserted his damage claim to include claims for the loss of tobacco, drink mix, coffee, toothpaste, toothbrush, and a toothbrush holder. Plaintiff apparently has also withdrawn his claim for the loss of a bar of soap and an earphone. Plaintiff has agreed with defendant's admissions and damage assessment, but has insisted he sustained additional property loss as a result of his July, 2001 transfer to a disciplinary confinement unit. Plaintiff has claimed total damages in the amount of \$19.65, plus filing fees. Plaintiff maintained all the property listed on the response form was lost while under defendant's control. The trier of fact agrees.

CONCLUSIONS OF LAW

{¶7} 1) This court *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.

{¶8} 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.

{¶9} 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.

{¶10} 4) Plaintiff has proven defendant's negligence proximately caused his property loss. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶11} 5) The court finds defendant liable to plaintiff in the amount of \$19.65, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶12} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶13} IT IS ORDERED THAT:

{¶14} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶15} 2) Defendant (Marion Correctional Institution) pay plaintiff (Kenneth V. Still) \$44.65 and such interest as is allowed by law;

{¶16} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk