

[Cite as *Bunting v. Trumbull Correctional Inst.*, 2002-Ohio-5272.]

IN THE COURT OF CLAIMS OF OHIO

LARRY A. BUNTING, #330-092 :
P.O. Box 901 :
Leavittsburg, Ohio 44430 : Case No. 2002-04445-AD

Plaintiff : MEMORANDUM DECISION

v. :

TRUMBULL CORRECTIONAL :
INSTITUTION :

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} Plaintiff, Larry A. Bunting, an inmate incarcerated at defendant, Trumbull Correctional Institution (TCI), spent several hours over a period of months handcrafting a model motorcycle made of wood pieces. After completing the model motorcycle, plaintiff chose to mail the item from TCI to the following: Gertrude E. Sheaks at 6194 Bluebird Road N.W., Malvern, Ohio 44644. On March 12, 2002, plaintiff, accompanied by TCI staff member, Sgt. R.A. Lewis, carried the model motorcycle to the institution mail room. Plaintiff indicated the motorcycle was packaged and prepared for mailing by both him and Sgt. Lewis. Plaintiff explained the model motorcycle was bound to the bottom of the packing box with bread ties and cushioning in the form of paper strips was placed around

the motorcycle inside the box. Plaintiff authorized postage payment for the motorcycle. Also, plaintiff purchased insurance coverage in the amount of \$400.00. Defendant's employee posted the package containing the motorcycle with the United Parcel Service (UPS).

{¶2} Subsequently, UPS delivered the package containing the model motorcycle to Gertrude E. Sheaks. Plaintiff asserted the package was opened and it was discovered the model motorcycle was broken into multiple pieces. The broken motorcycle and package were given back to the UPS driver for investigative purposes. On March 29, 2002, the broken motorcycle and package were returned by UPS to defendant's institution along with a letter addressed to plaintiff. In this letter the insurer for UPS informed plaintiff that insurance coverage for the damage to the motorcycle had been denied because "investigation indicates UPS caused no damage to your package." Defendant's personnel denied damaging plaintiff's motorcycle during the time mail room staff handled the property before it was delivered to UPS.

{¶3} Plaintiff consequently filed this complaint seeking to recover \$400.00, the insured value of the handcrafted model motorcycle, plus \$6.95, the cost of insurance coverage paid, and \$25.00 for filing fee reimbursement. Plaintiff has suggested his motorcycle was damaged while under the control of defendant's mail room staff and therefore defendant is liable for all damages claimed.

{¶4} Defendant has denied liability in this matter. Defendant has contended plaintiff did not offer sufficient proof to show the motorcycle was damaged while under the control of TCI personnel. Defendant has not assumed liability for plaintiff's damaged property just because UPS has denied any responsibility. Additionally, defendant has disputed plaintiff's damage claim insisting the model motorcycle can be repaired. Furthermore, defendant disputed plaintiff's claim the model was worth \$400.00

when intact.

{¶5} Defendant submitted a signed statement from Sgt. R.A. Lewis relating the following:

{¶6} "On March 12, 2002, at approximately 1430 hrs., I accompanied Inmate Bunting (330-092) to the Package Room at Trumbull Correctional Institution, where I supervised the packing, sealing [sic] and addressing of a package containing a mushfake Harley-Davidson Motorcycle made of matchsticks.

{¶7} At the time of packaging, the item mentioned above was intact, and reinforced in such a manner that normal shipping could not have damaged the item. I myself closed the package and sealed it with packaging tape before taking it to the Mailroom for mailing."

{¶8} Plaintiff responded on August 26, 2002. Plaintiff disagreed with defendant's contention that the model motorcycle could be repaired. Plaintiff maintained the damaged motorcycle is essentially splintered pieces of wood which cannot be refitted. Plaintiff insisted his handcrafted model had a value of at least \$400.00 when intact. Plaintiff argued his motorcycle must have been damaged by TCI mail room staff despite defendant's denials. Plaintiff has not introduced sufficient evidence to establish his handcrafted model motorcycle was damaged while under defendant's control.

CONCLUSIONS OF LAW

{¶9} 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.

{¶10} 2) Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v.*

C.R.C. (1990), 89-12968-AD.

{¶11} 3) 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.

{¶12} 4) 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.

{¶13} 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.

{¶14} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his motorcycle was damaged as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶18} 2) The court shall absorb the court costs in this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk