

IN THE COURT OF CLAIMS OF OHIO

WILLIE LOUIS GIBSON, #387-849	:	
P.O. Box 788		
1150 North Main Street	:	Case No. 2002-04585-AD
Mansfield, Ohio 44903	:	
	:	
Plaintiff	:	MEMORANDUM DECISION
	:	
v.	:	
	:	
BELMONT 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} 1) On or about January 29, 2002, plaintiff, Willie L. Gibson, an inmate incarcerated at defendant's Belmont Correctional Institution, was transferred to a segregation unit.
- {¶2} 2) Incident to his transfer, plaintiff's personal property was inventoried, packed, and delivered into defendant's custody.
- {¶3} 3) Plaintiff asserted several of his property items were lost while under defendant's control. He has alleged the following articles were lost: one pair of gym shoes, one pair of boots, one fan, two towels, fifteen cigars, one blanket, one tube of toothpaste and one sweat suit.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$234.23, the aggregate listed value of his alleged missing property.

{¶5} 5) Defendant filed an investigation report admitting liability for the loss of one towel, a tube of toothpaste, fifteen cigars and a pair of sweat pants totaling \$47.10 in damages. Defendant denied liability for the remaining property claimed: one towel, one pair of gym shoes, one pair of boots, one fan, a blanket and a sweat shirt. Defendant asserted plaintiff's gym shoes and fan were recovered and returned to plaintiff's possession. Defendant did not pack or exercise control over a sweat shirt and an additional towel when plaintiff was transferred to a segregation unit on January 29, 2002. Although evidence seems to indicate defendant packed and subsequently lost a pair of boots which were in plaintiff's possession, defendant has denied liability for the boots based on the suggestion plaintiff obtained the boots in violation of internal regulations. Evidence has shown plaintiff received a pair of boots in a sundry package on or about July 19, 2000. Defendant asserted plaintiff did not possess a personal blanket, although evidence has shown plaintiff received a blanket in a sundry package on or about July 19, 2000. Additionally, plaintiff's January 29, 2002 property inventory reflects, "blankets sent to laundry."

{¶6} 6) Plaintiff filed a response to defendant's investigation report on July 19, 2002. He supplemented the response with additional information on July 29, and August 2, 2002. In his response he insisted he should be compensated for all the property items claimed. Plaintiff also insisted all items claimed were lost while under defendant's control. Plaintiff acknowledged his boots were contraband. However, plaintiff stated he paid \$75.00 for these apparent replacement boots and asserted the boots were lost while under defendant's care. Plaintiff denied his gym shoes and fan were returned. Evidence in the form of a

property inventory dated December 4, 2001 establishes plaintiff owned a fan, four towels, a blanket and a sweat suit. Plaintiff did not possess a pair of boots on December 4, 2001, although he was sent a pair of boots on or about July 19, 2000.

CONCLUSIONS OF LAW

{¶7} 1) Plaintiff's claim for the loss of the boots is denied. Plaintiff seemingly admitted he obtained the boots in violation of internal regulations.

{¶8} Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶9} 2) 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} 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.

{¶11} 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.

{¶12} 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.

{¶13} 6) In respect to the loss of all articles claimed other than the boots plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶14} 7) The court finds defendant liable to plaintiff in the amount of \$159.23, 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.

{¶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 GRANTED in part and DENIED in part;

{¶18} 2) Defendant (Belmont Correctional Institution) pay plaintiff (Willie L. Gibson) \$184.23 and such interest as is allowed by law;

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

___ DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
8/22
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