

IN THE COURT OF CLAIMS OF OHIO

JOHNNY CUNNINGHAM, #233-378 :  
P.O. Box 540 :  
St. Clairsville, Ohio 43950 : Case No. 2002-10828-AD

Plaintiff : MEMORANDUM DECISION

v. :

BELMONT CORRECTIONAL :  
INSTITUTION :

Defendant :

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

For Defendant: David Bobby, Warden  
Belmont Correctional Institution  
P.O. Box 540  
St. Clairsville, Ohio 43950  
: : : : : : : : : : : : : : :

{¶1} THE COURT FINDS THAT:

{¶2} 1) On October 2, 2002, plaintiff, Johnny Cunningham, filed a complaint against defendant, Belmont Correctional Institution. Plaintiff asserts on or about May 28, 2002, tennis shoes ordered from an outside vendor were lost by defendant's agents. Plaintiff seeks damages in the amount of \$57.75. This claim was assigned case no. 2002-08963-AD;

{¶3} "2) On October 2, 2002, defendant filed an investigation report admitting liability and damages;

{¶4} 3) On November 5, 2002, this court issued an order in case no. 2002-08963-AD finding plaintiff's affidavit of indigency was invalid and requiring plaintiff to submit the filing fee on or before December 5, 2002, or face dismissal of his case;

{¶5} 4) On December 13, 2002, plaintiff, Johnny Cunningham,

filed a second complaint against defendant, Belmont Correctional Institution. Plaintiff alleges the same facts as contained in the initial complaint. Plaintiff submitted the filing fee with this complaint and the claim was assigned case no. 2002-10828-AD;

{¶6} 5) On January 7, 2003, this court issued an order in case no. 2002-08963-AD dismissing this case based on plaintiff's failure to submit the filing fee;

{¶7} 6) On January 29, 2003, plaintiff filed a third complaint concerning the same cause of action against defendant, Belmont Correctional Institution. This case was assigned case no. 2003-01946-AD;

{¶8} 7) On January 29, 2003, plaintiff filed a letter in case no. 2002-08963-AD in which he wishes to include all documents filed in case no. 2002-08963-AD in case no. 2002-10828-AD.

{¶9} 8) On February 13, 2003, defendant filed an investigation report admitting liability and damages.

{¶10} 9) On February 25, 2003, plaintiff filed a response to defendant's investigation report.

{¶11} THE COURT CONCLUDES THAT:

{¶12} 1) I find, by a preponderance of the evidence, negligence by defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD;

{¶13} 2) Plaintiff has suffered damages in the amount of \$57.75, 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.

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

{¶15} IT IS ORDERED THAT:

{¶16} 1) A ruling on the motion concerning case no. 2002-08963-AD is contained in that case;

{¶17} 2) A ruling on the disposition of case no. 2003-01946-AD is contained in that case;

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

{¶19} 5) Defendant (Belmont Correctional Institution) pay plaintiff (Johnny Cunningham) \$82.75 and such interest as is allowed by law;

{¶20} 6) The court shall absorb the court costs of this case.

DANIEL R. BORCHERT  
Deputy Clerk

DRB/laa  
2/5  
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