

a conduct report for contraband possession with resulting confiscation of the excess property. Defendant professed plaintiff chose to voluntarily discard the excess publications himself. Defendant contended plaintiff effectively authorized the destruction of his books and magazines. Additionally, defendant stated the discarded books and magazines were outdated and therefore were not as valuable as plaintiff has claimed.

{¶4} 4) Plaintiff filed a response insisting proper procedure was not followed concerning the disposition of his books and magazines. Plaintiff related he wanted to send the publications home. Plaintiff asserted the publications were destroyed by defendant's personnel.

{¶5} 5) After reviewing all the evidence, the trier of fact finds plaintiff chose to voluntarily discard the excess publications.

CONCLUSIONS OF LAW

{¶6} 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. When defendant engaged in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD. However, 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.

{¶7} An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. Plaintiff chose to discard his own property rather than have defendant destroy the publications. Plaintiff has failed to produce sufficient evidence to indicate he did not voluntarily discard his publications. Furthermore, plaintiff has not offered enough evidence to show the discarded materials were valued at the amount claimed.

{¶8} Plaintiff has no right to assert a claim for property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD; *Johnson v. Southern Ohio Correctional Facility* (2000), 2000-07846-

AD. Any property which belonged to plaintiff and was voluntarily thrown away became abandoned property, whereby plaintiff relinquished all rights of ownership. Therefore, plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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

{¶10} IT IS ORDERED THAT:

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

{¶12} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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