

the tobacco at the institution commissary. Defendant asserted plaintiff never purchased tobacco items or envelopes from the LeCI commissary. Although defendant admitted trading between inmates was permitted, defendant suggested plaintiff obtained the envelopes he traded for tobacco through impermissible means. Defendant further suggested plaintiff by obtaining the number of products he acquired (both envelopes and tobacco) violated defendant's policy prohibiting stockpiling of goods. Essentially, defendant contended plaintiff is not entitled to any recovery for the confiscated items because he had no right of ownership in these items. Defendant maintained plaintiff was not the proper owner of the tobacco products or the envelopes he used for trading purposes.

{¶5} 5) On September 5, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff denied he violated defendant's stockpiling restriction. Plaintiff insisted he used envelopes he received in the mail to trade for the tobacco products that were subsequently confiscated. Plaintiff argued he obtained both the envelopes and tobacco through legitimate means and therefore had a right to possess the confiscated items. Plaintiff related he was never charged with contraband possession or any other institutional rule violation in connection with the March 25, 2002 confiscated action by LeCI personnel.

{¶6} 6) After reviewing all documents presented, the trier of fact finds sufficient evidence has been presented to prove plaintiff was the rightful owner of the confiscated products having obtained these items through permissible means.

CONCLUSIONS OF LAW

{¶7} 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.

{¶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) 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.

{¶11} 5) Negligence on the part of defendant has been shown in respect to the loss of all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶12} 6) Defendant is liable to plaintiff in the amount of \$84.40, 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.

{¶13} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$109.40, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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10/17

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