

[Cite as *Leigh v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5908.]

IN THE COURT OF CLAIMS OF OHIO

DAVID LEIGH	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2004-07026-AD
	:	
DEPARTMENT OF REHABILITATION AND CORRECTIONS	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, David W. Leigh, an inmate, alleged his television set was damaged during a transfer from Ross Correctional Institution to Trumbull Correctional Institution on March 29, 2004.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$220.00, the total replacement cost of a new television set. Plaintiff submitted the requisite material filing fee.

{¶ 3} 3) Defendant denied plaintiff’s television set was damaged during transfer on March 29, 2004. Defendant related the television set was examined and no damaged areas were noted.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 4) 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.

{¶ 8} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 9} 6) Plaintiff has failed to show any causal connection between any damage to his television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), 2003-04236-AD.

IN THE COURT OF CLAIMS OF OHIO

DAVID LEIGH	:	
Plaintiff	:	
v.	:	CASE NO. 2004-07026-AD
DEPARTMENT OF REHABILITATION AND CORRECTIONS	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
.....	:	

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 defendant. Court costs are assessed against plaintiff. 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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Plaintiff, Pro se

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RDK/laa
10/7
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