



requested and was granted permission from NCCI staff to set aside certain items of his property for mailing home before the transfer to MCI. However, according to plaintiff, the property he set aside ("shorts, boxers, letters, cards, mail, handballs, gym shoes, cup, bowl, and 3 sets of motions") were never mailed to his home address from NCCI. While plaintiff was transferred to a segregation unit at MCI, certain items of his personal property were classified as contraband and confiscated. The confiscated items include a cup, mail, a "porn" folder, two handballs, a state issue coat, four t-shirts, one pair of boxer shorts, and a towel. These contraband articles were forfeited through an approved order from the Marion County Common Pleas Court dated December 2, 2004. The forfeited items were destroyed in accordance with the forfeiture order.

{¶ 3} 3) On September 9, 2004, MCI personnel further reduced plaintiff's property in preparation for transfer from MCI to the Toledo Correctional Institution ("ToCI"). The withheld property items were foodstuffs and included the following: two bags of chips, two soups, one bag of coffee, a box of tea bags, two boxes of macaroni and cheese, a jar of honey, a bottle of hot sauce, one box of processed cheese spread, a can of fish, and one salsa. Plaintiff elected to mail these withheld articles to an outside address. A package containing the withheld foodstuffs was mailed on September 12, 2004, to Kathy Drake at 19 Jenkin Drive, Dayton, Ohio 45427-2618. Plaintiff authorized the mailing of his foodstuffs and paid for the cost of mailing.

{¶ 4} 4) Plaintiff has asserted several items of his personal property were lost while under the control of defendant's employees from the time the property was originally packed on or about August 23, 2004 to the time plaintiff arrived at ToCI and regained possession of his property. Furthermore, plaintiff originally claimed none of his property was ever mailed home although he

acknowledged signing a cash slip to authorize payment of postage for the mailing of his property. Plaintiff filed this complaint seeking to recover \$659.08, the estimated replacement value of his alleged missing property which plaintiff contended was lost while under defendant's control. Plaintiff insisted the following items were lost: one pair of boots, a walkman, a set of headphones, two books, a blanket, three pairs of gym shorts, four towels, six boxer shorts, four cassette tapes, a pair of gloves, forty photographs, four strap t-shirts, a pair of Fila gym shoes, two Joe Boxers, four footies, three legal motions, two handballs, a cup, a bowl, and various products purchased from the institution commissary. All property claimed, with the exception of a pair of boots, two pairs of gym shorts, and a bowl, was taken into the custody and control of NCCI staff. Evidence has shown other claimed items such as the strap t-shirts, Joe Boxers, footies, legal motions, handballs, towel, and a cup were confiscated and subsequently forfeited through court order. The \$25.00 filing fee was paid.

{¶ 5} 5) Defendant admitted liability for the loss of plaintiff's walkman, headphones, two books, a blanket, and four cassette tapes. However, defendant has contended plaintiff's damage claim totaling \$113.62 for these property items seems excessive. Defendant did not offer an alternative suggestion regarding adequate damages for plaintiff's loss.

{¶ 6} 6) Defendant denied liability for any other property loss claimed by plaintiff. Defendant provided evidence establishing plaintiff's commissary purchases were mailed home. Also, defendant produced evidence proving the strap t-shirts, footies, legal motions, handballs, a cup, and Joe Boxers were properly forfeited. Defendant insisted all other property items claimed as lost were either packed and forwarded to ToCI or never packed at all. Evidence has shown defendant did not pack or exercise control over

a pair of boots, two pairs of gym shorts, and a bowl incident to plaintiff's transfer from NCCI to MCI. Evidence has shown plaintiff's photographs, gloves, gym shoes, and cup were forwarded to ToCI. Although defendant's personnel packed four towels, one pair of gym shorts, and six pairs of undershorts at NCCI, these items were not included on plaintiff's property inventory when he arrived at ToCI.

{¶ 7} 7) Plaintiff, in his response to defendant's investigation report, maintained defendant should bear liability for all property claimed. Plaintiff acknowledged his mother received a box in the mail containing his commissary purchases. However, plaintiff alleged all containers holding food products had been opened and the contents were dumped into the box. Plaintiff surmised defendant's employees effectively destroyed all these commissary items before mailing the package to his mother. Plaintiff stated he owned two pairs of gym shoes and two photo albums when he was incarcerated at NCCI. However, plaintiff professed he received one pair of gym shoes and one photo album when he arrived at ToCI. This allegation is unsupported. Additionally, plaintiff argued the forfeiture of his confiscated property was improper.

#### CONCLUSIONS OF LAW

{¶ 8} 1) 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} 2) 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} 3) Plaintiff's failure to prove delivery of additional shoes, additional photographs, boots, two pairs of gym shorts, and

a bowl to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 11} 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.

{¶ 12} 5) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61.

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

{¶ 14} 7) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 15} 8) Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v.*

C.R.C. (1990), 89-12968-AD. Plaintiff has failed to prove the mailed food items were destroyed by defendant prior to mailing.

{¶ 16} 9) An inmate plaintiff is barred from recovering the value of confiscated property formally forfeited and subsequently destroyed pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for his destroyed confiscated property is dismissed.

{¶ 17} 10) Negligence on the part of defendant has been shown in respect to the loss of a walkman, headphones, books, blanket, cassette tapes, one pair of gym shorts, four towels, and six pairs of undershorts. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 18} 11) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 19} 12) Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782.

{¶ 20} 13) The court finds defendant liable to plaintiff in the amount of \$175.00, 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.

JAMES WRIGHT :  
 Plaintiff :  
 v. : CASE NO. 2005-01170-AD  
 DEPARTMENT OF REHABILITATION : ENTRY OF ADMINISTRATIVE  
 AND CORRECTIONS : DETERMINATION  
 Defendant :  
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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 \$200.00, 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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