

[Cite as *Harris v. Madison Correctional Inst.*, 2005-Ohio-4318.]

IN THE COURT OF CLAIMS OF OHIO

MASON HARRIS :
Plaintiff :
v. : CASE NO. 2005-03296-AD
MADISON CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
: :

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Mason Harris, an inmate incarcerated at defendant, Madison Correctional Institution ("MaCI"), stated he was transferred to a segregation unit on September 17, 2004, and his personal property was held in the custody of MaCI personnel. Apparently, plaintiff was held in segregation at MaCI from September 17, 2004, until he was transferred to the Warren Correctional Institution ("WCI") on November 15, 2004. Plaintiff related he was separated from his personal property the entire time he was confined to the segregation unit at MaCI. On or about December 17, 2004, plaintiff was again transferred from WCI to the Lebanon Correctional Institution ("LeCI"). Plaintiff's personal property was forwarded incident to all the transfers.

{¶ 2} 2) Plaintiff alleged that several items of his personal property were lost by MaCI personnel at sometime after he was sent to the segregation unit on or about September 17, 2004. Furthermore, plaintiff claimed his television set and light bulb were irreparably damaged while in the custody and care of MaCI employees. Plaintiff asserted defendant's employees lost the

following items: one pair of nylon wind pants, one pair of gym shorts, one pair of shower shoes, two t-shirts, one robe, a sport shirt, three towels, one pair of Fila gym shoes, one pair of slippers, twelve magazines (six Playboy, six Easyrider), three wash cloths, and three bowls. Plaintiff filed this complaint seeking to recover \$249.35, the stated value of his alleged missing property.

Plaintiff also seeks recovery of \$150.60, the total stated replacement cost of his damaged television set and light bulb. The filing fee was paid.

{¶ 3} 3) Plaintiff submitted a copy of an inmate property inventory compiled at MaCI on September 17, 2004, when plaintiff's property was initially packed by a MaCI staff. In regard to the property items relevant to this claim, the September 17, 2004, inventory lists one pair of sweat pants, one pair of gym shoes (no brand name described), one pair of gym shorts, one magazine, three towels, and three wash cloths among plaintiff's packed property. A television set is listed. However, there is no description of damage to the television set noted.

{¶ 4} 4) Both plaintiff and defendant submitted copies of plaintiff's property inventory dated November 15, 2004, at WCI and compiled incident to his transfer from MaCI. This inventory lists two pairs of sweat pants, one robe, six t-shirts, two gym shoes (Nike brand, white low-cuts), one pair of slippers, two pairs of gym shorts, two towels, two wash cloths, a pair of shower shoes, and one bowl. A television set is listed, but there is no notation about damage. Both plaintiff and defendant submitted copies of another inventory dated November 17, 2004, and compiled at WCI. This inventory lists two pairs of sweat pants, one robe, fourteen t-shirts (eight over the institutional limit), gym shoes (Reebok brand white low-cuts), two pairs of gym shorts, two towels, and three wash cloths. The November 17, 2004, inventory was made when

plaintiff was being transferred to a security control unit and he was not present when his property was packed. Plaintiff filed a copy of an additional property inventory dated December 16, 2004, and made in preparation for his transfer from WCI to LeCI. Among the property relevant to the instant claim, the inventory lists two pairs of sweat pants, a robe, six t-shirts, gym shoes (Reebok brand, white low-cuts), a pair of shower shoes, two pairs of gym shorts, two or three towels, and three wash cloths. The inventory notes a button is broken on plaintiff's television set and a light bulb in his lamp is broken.

{¶ 5} 5) Defendant denied losing or damaging any of plaintiff's property while exercising control over the items. Defendant contended plaintiff failed to present sufficient evidence to prove any of his property was lost or damaged while in the custody of MaCI staff. Defendant pointed out plaintiff retains possession limits of such items as gym shorts, t-shirts, gym shoes, and a robe. Defendant explained plaintiff does not have subscriptions to either Playboy or Easyrider magazines and, consequently, has no right to assert a claim for property loss of items he cannot prove he legitimately possessed. Defendant also pointed out plaintiff possessed the institutional limit for shower shoes and slippers when he was transferred from MaCI to WCI on or about November 15, 2004. There is no evidence MaCI personnel ever packed a sport shirt belonging to plaintiff. Plaintiff retained possession of all towels and wash cloths which were sent to MaCI to WCI. Plaintiff had one bowl when he arrived at WCI. There is no evidence he retained this bowl. Defendant denied plaintiff's television set and light bulb were broken by MaCI staff. Plaintiff possessed two pairs of sweat pants when he arrived at WCI. He retained two pairs of sweat pants.

{¶ 6} 6) Plaintiff filed a response. The response does not

contain information supporting his claim. Plaintiff insists his property was lost and damaged while under the care of MaCI employees.

CONCLUSIONS OF LAW

{¶ 7} 1) Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1984), 84-09071.

{¶ 8} 2) 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.

{¶ 9} 3) 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.

{¶ 10} 4) 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.

{¶ 11} 5) 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} 6) 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.

{¶ 13} 7) Plaintiff's failure to prove delivery of certain items of property 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.

{¶ 14} 8) 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.

{¶ 15} 9) 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*, 2003-04236-AD, 2003-Ohio-3615.

{¶ 16} 10) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

{¶ 17} 11) Plaintiff has failed to prove, by a preponderance of the evidence, any additional items of his property were lost, damaged, or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of*

Columbus, Ohio 43229

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