



after the transfer from SOCF. Plaintiff maintained he was given an opportunity to examine his property on May 23, 2004, and noted several items were missing including four towels, a cassette tape, three white t-shirts, and two pairs of boxer shorts.

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$264.00, the total estimated replacement value of the articles which were allegedly lost or broken in transfer or were supposedly lost at SOCF and never mailed. The requisite material filing fee was paid.

{¶ 4} 4) Defendant admitted liability for the loss of the following: a bowl, a pair of gym shorts, a long sleeved shirt, a brush, a large cup, three belts, a ball cap, detergent, a fan, gloves, three t-shirts, a sweater, gym shoes, a sweat shirt, four tank tops, and three wash cloths. Defendant contended the value of these items should not exceed \$50.00 and therefore, plaintiff should not recover more than \$50.00 for the loss of these items. Defendant specifically denied liability for the loss of any photographs. Plaintiff claimed 130-140 photographs were lost. Plaintiff's property records show his photographs were transferred to SOCF on May 22, 2003. Plaintiff's property records show his photographs were in the custody and care of OSP staff on May 20, 2004. Defendant generally denied any other property articles claimed were lost by SOCF staff.

{¶ 5} 5) In his response to the investigation report, plaintiff insisted the property defendant admitted losing was worth more than \$50.00. Plaintiff maintained his photographs were lost, noting, "I don't know what happened to them. They were lost but its okay." Plaintiff did not further address any issue regarding the loss of additional property items.

#### CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

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

{¶ 11} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his hangers, photographs, slippers, winter cap, towels, cassette tape, white t-shirts, boxer shorts, and clock were lost or damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 12} 7) Negligence by defendant has been shown in respect



notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT  
Deputy Clerk

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