

[Cite as *McNatt v. Dept. of Rehab. & Corr.*, 2002-Ohio-7241.]

IN THE COURT OF CLAIMS OF OHIO

BILLY C. MCNATT, #R150-336 :
P.O. Box 740 :
London, Ohio 43140-0740 : Case No. 2002-07614-AD

Plaintiff : MEMORANDUM DECISION

v. :

DEPT. OF REHABILITATION AND :
CORRECTION :

Defendant

: : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} Plaintiff, Billy G. McNatt, an inmate incarcerated at defendant's Madison Correctional Institution, has alleged his housing area was searched on July 9, 2002 by defendant's employee, Officer R. Payton. Plaintiff has further alleged his radio was broken by Officer Payton during the search.

{¶2} Plaintiff filed this complaint seeking to recover \$85.00, the total replacement cost of his radio. Plaintiff submitted evidence showing he initially received his radio on or about August 23, 1999. Plaintiff submitted the filing fee with the complaint.

{¶3} Plaintiff submitted an affidavit from a fellow inmate, Ronald Anderson, who stated he observed a member of defendant's staff handling plaintiff's radio and twisting the volume knob on the appliance.

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{¶4} Plaintiff submitted another affidavit from a fellow inmate, Jeremy Paynter, who stated he saw Officer Payton pull a knob from plaintiff's radio and then replace the knob.

{¶5} Defendant denied any liability in this matter. Defendant contended plaintiff did not offer sufficient proof to establish his radio was damaged during a July 9, 2002 search conducted by Officer Payton. Defendant did not submit any personal account of Officer Payton regarding the events of July 9, 2002.

{¶6} Plaintiff filed a response. Plaintiff insisted his radio was damaged by Officer Payton during the search conduct on July 9, 2002. Plaintiff related he reported the condition of his radio immediately upon discovering the appliance was not in working order.

{¶7} Plaintiff filed an affidavit from a fellow inmate, James E. Shorter, Jr. Plaintiff resubmitted affidavits of fellow inmates, Jeremy W. Paynter and Ronald Anderson.

CONCLUSIONS OF LAW

{¶8} 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} 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.

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{¶10} 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} Plaintiff has failed to prove a causal connection between the damage to his radio and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Institution* (1998), 97-11819-AD.

{¶12} 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.

{¶13} 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 issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶14} Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

DANIEL R. BORCHERT
Deputy Clerk

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