

[Cite as *Ezell v. Noble Correctional Inst.*, 2003-Ohio-4286.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT EZELL	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02373-AD
NOBLE CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) On or about October 18, 2002, plaintiff, Robert Ezell, an inmate incarcerated at defendant, Noble Correctional Institution, was transferred from the institution's general population to a segregation unit. Plaintiff's personal property was packed and delivered into defendant's custody incident to this transfer.

{¶2} 2) Plaintiff alleged that when he subsequently regained possession of his property upon his release from segregation, he discovered his radio/cassette player, headphones, and three cassette tapes were not returned and presumed lost. Consequently, plaintiff filed this complaint seeking to recover \$109.48, the estimated value of his alleged missing property items which he claims were lost while under defendant's control. On March 10, 2003, plaintiff submitted the filing fee.

{¶3} 3) Defendant acknowledged receiving delivery of plaintiff's cassette tapes, headphones, and cassette player. Defendant explained the cassette player and headphones were placed

in plaintiff's locker box on February 5, 2003, prior to his transfer from defendant's institution. Apparently the cassette player and headphones were not located by defendant until February 5, 2003, although defendant seemingly had all of plaintiff's property under its custody from the time plaintiff was placed in a local control unit. Defendant denied any liability in this matter, claiming none of plaintiff's property was lost while stored under the control of Noble Correctional Institution staff. Defendant originally packed eight cassette tapes. No other tapes were added to the inventory.

{¶4} 4) On June 16, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff submitted a copy of his property inventory which was compiled on February 12, 2002 subsequent to his transfer to Trumbull Correctional Institution from defendant's facility. This inventory lists nine cassette tapes, but does not list a cassette player or a set of headphones. Plaintiff asserted his headphones and cassette player were not forwarded from the Noble Correctional Institution. The fact plaintiff's headphones and cassette player were not received at the Trumbull Correctional Institution constitutes prima facie evidence the items were lost while under the care of Noble Correctional Institution staff. Defendant has not offered any explanation to rebut this evidence.

#### CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 2) Although not strictly responsible for a prisoner's property, defendant ad 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.

{¶7} 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.

{¶8} 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.

{¶9} 5) Negligence by defendant has been shown in respect to the loss of the headphones and a cassette player. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶10} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his cassette tapes were lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶11} 7) Plaintiff has suffered damages in the amount of \$74.98, 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.

{¶12} 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 \$99.98, 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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RDK/DRB/laa  
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