



walkman (AIWA brand) was damaged while in the custody of TCI personnel.

{¶ 4} 4) Plaintiff filed this complaint seeking to recover \$216.25, the estimated value of his alleged missing property which plaintiff claims was lost or damaged while under defendant's control. The filing fee was paid.

{¶ 5} 5) On August 22, 2002, plaintiff filed a theft report with TCI employees concerning the alleged loss of his property. The theft report carried the notation, "3 bags ar(r)ived sheet said four bags." The "sheet" referenced in the theft report presumably represents plaintiff's property inventory list which should have been compiled on August 19, 2002, when plaintiff entered segregation. Neither plaintiff nor defendant submitted a copy of a property inventory compiled on or about August 19, 2002. Plaintiff submitted documentation dated September 10, 2002, regarding notice of a damaged walkman.

{¶ 6} 6) Defendant denied receiving delivery of plaintiff's alleged missing property items. Defendant has no record of exercising control over the alleged missing property items. Defendant contended plaintiff has failed to prove he delivered the alleged lost property into the custody of TCI personnel. Furthermore, defendant argued plaintiff failed to prove he actually owned the claimed lost property.

{¶ 7} 7) Plaintiff insisted his property was lost or stolen while under defendant's control. Plaintiff did not produce a property inventory to confirm what items were delivered to TCI personnel on August 19, 2002. Plaintiff did not file any receipts or other documentation to verify he purchased and possessed the alleged missing items.

#### CONCLUSIONS OF LAW

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 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) 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} 6) 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} 7) Plaintiff has failed to prove, by a preponderance of the evidence, any additional items of his property were lost,



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