



shorts, six undershorts, six additional t-shirts, a sweat suit, an adaptor, a t.v. cable, a legal dictionary, a dictionary, colored paper, and twelve pens.

{¶ 3}3) Consequently, plaintiff filed this complaint seeking to recover \$967.06, the estimated value of his alleged damaged and missing property. Plaintiff has asserted his television set was damaged and his other property was lost while under the custody of ToCI staff. The filing fee was paid. Before filing this complaint, plaintiff filed an informal complaint regarding missing and damaged property. In his informal complaint plaintiff noted his fan was damaged and the following items were missing: a television set with remote, headphones, AM-FM radio Walkman, alarm clock, three bars of face soap, a pillow speaker, earbuds, a blanket, four towels, four washcloths, three books including a legal dictionary, nine bottles of oil, watch batteries, two containers of coffee, six pouches of tobacco, and two packs of batteries. Plaintiff claimed property valued at \$527.90 was missing or damaged. Plaintiff subsequently filed a grievance appeal noting the following items were damaged or missing: a television set with remote, headphones, AM-FM radio, alarm clock, three bars of soap, a pillow speaker, earbuds, a fan, blanket, two watch batteries, two containers of coffee, six pouches of tobacco, and two packs of batteries. Plaintiff valued the listed property at \$545.60. Plaintiff supplemented this grievance appeal claiming additional missing property including the following: three deodorant, three shaving cream, three after-shave, six bars of Dial soap, four bars of Tone soap, four shampoo, two conditioner, a hairbrush, three tubes of

toothpaste, one container of coffee, three cheese crackers, a cotton swab, ten legal envelopes, thirty-five embossed envelopes, a legal kit, two file folders, six pairs of socks, six pairs of gym shorts, six t-shirts, six pairs of undershorts, six additional t-shirts, an adaptor, a sweat suit, one coaxial cable, a Sony Dream Machine AM-FM cassette player, one standard dictionary, one legal dictionary, another blanket, colored paper, twelve pens, and additional coffee. Plaintiff valued these alleged missing property items at \$421.81.

{¶ 4} 4) Although plaintiff and his property were transferred from SOCF to ToCI on January 21, 2005, it appears ToCI staff did not inventory plaintiff's transferred property until January 24, 2005, when plaintiff was assigned to the institution infirmary. Evidence shows plaintiff received his property on January 27, 2005. Defendant supplied a copy of plaintiff's property inventory compiled at SOCF on January 20, 2005, made incident to his transfer. A comparison of the January 20, 2005, inventory with the January 24, 2005, inventory shows neither SOCF staff nor ToCI employees packed the following claimed missing property: alarm clock, pillow speaker, watch batteries, cheese crackers, after-shave, Dial soap, Tone soap, cotton swab, t.v. cable, legal envelopes, adaptor, gym shorts, and paper. Plaintiff's television set was included on both inventories. However, the inventories do not contain any notation regarding the condition of the television set. Consequently, defendant contended plaintiff did not offer any evidence to establish the television set was damaged while under the control of either SOCF employees or ToCI personnel.

{¶ 5} 5) Defendant admitted liability for the loss of plaintiff's radio, earbuds, deodorant, shaving cream, shampoo, conditioner, hairbrush, embossed envelopes, legal kit, folders, six t-shirts, dictionary, and legal dictionary. Defendant acknowledged plaintiff suffered damages for property loss in the amount of \$79.34.

{¶ 6} 6) Evidence has shown plaintiff's fan, one blanket, and six pairs of socks were declared contraband and destroyed under plaintiff's authorization. Although plaintiff claimed three blankets and a total of seven containers of coffee, there is no evidence he possessed more than two blankets and two containers of coffee when his property was initially packed at SOCF. One blanket was returned to plaintiff and one was destroyed under his authorization. Two containers of coffee were packed and returned to plaintiff.

{¶ 7} 7) Evidence has shown the remaining items claimed including three bars of soap, headphones, tobacco, batteries, toothpaste, undershorts, sweat suit, additional t-shirts, and pens were packed and returned to plaintiff's possession. Furthermore, it appears a Sony radio/cassette player was packed and also returned to plaintiff's possession.

{¶ 8} 8) Plaintiff responded to defendant's investigation report by insisting his television set was damaged by defendant's personnel. Also, plaintiff again asserted all property claimed was lost while under defendant's control.

#### CONCLUSIONS OF LAW

{¶ 9} 1) 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} 2) 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} 3) Plaintiff's failure to prove delivery of an alarm clock, pillow speaker, one blanket, watch batteries, after-shave, Dial soap, Tone Soap, cheese crackers, cotton swab, legal envelopes, paper, gym shorts, adaptor, t.v. cable, and additional coffee 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.

{¶ 12} 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.

{¶ 13} 5) 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. Antill* (1964), 176 Ohio St. 61.

{¶ 14} 6) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained the loss of headphones, three bars of soap, coffee, tobacco, blanket,

batteries, toothpaste, undershorts, t-shirts, sweat suit, pens, and a Sony Dream Machine, as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 15} 7) Plaintiff has no right to pursue a claim for property in which he cannot prove any rightful 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. By authorizing the destruction of his fan, blanket, and socks plaintiff relinquished all ownership rights to the device and personal property. *Howard v. Mansfield Correctional Inst.* , 2005-01293-AD, 2005-Ohio-4645.

{¶ 16} 8) 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. Department of Rehabilitation and Correction*, 2003-04236-AD, 2003-Ohio-3615.

{¶ 17} 9) Negligence on the part of defendant has been shown in respect to the loss of a walkman, earbuds, books, deodorant, shaving cream, shampoo, conditioner, hairbrush, embossed envelopes, legal kit, folders, and six t-shirts. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 18} 10) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 19} 11) The court finds defendant liable to plaintiff in the amount of \$79.34, 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.

IN THE COURT OF CLAIMS OF OHIO

MARK WILSON :

Plaintiff :

v. :

CASE NO. 2006-01173-AD

OHIO DEPT. OF CORRECTIONS :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

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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 \$104.34, 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

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