

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

WILLIAM SCOTT

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2009-01158-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, William Scott, an inmate incarcerated at defendant's Mansfield Correctional Institution (ManCI), stated that he authorized the mailing of five compact discs (CDs) on or about July 3, 2008. Plaintiff related the CDs were delivered to the ManCI mailroom and funds were withdrawn from his inmate account to pay for the postage cost of mailing the CDs to his home address. Plaintiff asserted that he subsequently discovered the CDs never arrived at his home address.

{¶ 2} 2) Plaintiff maintained that the CDs were never mailed by ManCI staff and were either lost or stolen while under defendant's control. Plaintiff filed this complaint seeking to recover \$93.91, the replacement value of the alleged lost CDs, \$10.00 for postage costs he paid to have the CDs mailed, and \$65.00 for phone call charges he made to his home to try to locate the CDs. The damage claim for telephone call expense is not compensable in a claim of this type and is consequently denied. Plaintiff submitted a copy of a "Withdrawal Check Out-Slip" showing a total of \$4,80 was withdrawn from his inmate account on July 3, 2008 to pay for postage costs. Plaintiff

submitted a copy of a sales receipt dated June 24, 2008 establishing he purchased five CDs at a cost of \$93.91. Payment of the filing fee was waived.

{¶ 3} 3) Plaintiff submitted a statement from his mother, Estelle Scott, dated July 24, 2008 who noted she was informed by plaintiff that he would be sending five CDs to her home, but she had yet to receive the CDs through the mail.

{¶ 4} 4) Defendant asserted a package containing plaintiff's five CDs was delivered to the United States Postal Services (USPS) for mailing to the residence of plaintiff's mother. Defendant explained that plaintiff "had the option to send the package with delivery confirmation so it could be tracked, with insurance to cover any potential losses, and/or by certified mail," but instead chose to send the CDs by regular mail. Defendant pointed out that the USPS "reports that the package cannot be tracked" since it was sent by regular mail. Defendant denied that the CDs were not posted with the USPS. Defendant denied the CDs were lost while under the control of ManCI personnel.

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 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.

{¶ 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) 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 to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 10} 6) Defendant is not responsible for property once it is shipped out of the facility. At that point, the property is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1989), 89-12968-AD; *Reynolds v. Lebanon Correctional Institution* (2001), 2001-03798-AD, jud; *Frazier v. Mansfield Correctional Inst.* (2006), 2005-09375-AD, 2006-Ohio-7276 jud; *Wallace v. Corr. Reception Ctr.*, Ct. of Cl. No. 2006-06230-AD, 2007-Ohio-2418.

{¶ 11} 7) Plaintiff has failed to prove, by a preponderance of the evidence, any of his property items were lost, discarded or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

William Scott, #452-286
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RDK/laa
6/4
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