

voluntarily discard all his property which exceeded the 2.4 cubic feet limitation standard. The articles plaintiff chose to throw away were not inventoried, either by plaintiff or defendant.

{¶3} 3) Plaintiff subsequently complained several of his property items were missing from the bulk of property defendant had packed and exercised control of since October 6, 2001. Plaintiff asserted the following articles were missing: a pair of boots, forty-one envelopes, two television cables, a hair brush, a sweatsuit, a pair of gym shorts, three belts, a pair of gym shoes, six t-shirts, a blanket, three towels, eight packs of cigarettes, a can of tobacco, two cassette tapes, and two photo albums containing assorted photographs.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$590.93, the estimated replacement cost of his alleged missing property. Plaintiff suggested all articles of property claimed were either lost or stolen while under the control of ManCI staff at some time between October 6, 2001 and December 1, 2001. Plaintiff was excused from paying the requisite \$25.00 filing fee to pursue this action.

{¶5} 5) Defendant denied any liability in this matter. Defendant argued plaintiff has failed to produce evidence establishing he was the rightful owner of the alleged missing envelopes, television cables, cigarettes, tobacco products, belts, photo albums, gym shorts, hair brush, and sweatsuit. Defendant explained plaintiff has proven ownership of a blanket, two pairs of gym shoes, boots, five cassette tapes, six t-shirts and two towels. Property inventories compiled during October 2001 show ManCI staff received delivery of all property claimed as lost except the envelopes, one photo album, and one cable. None of the alleged lost property is listed on the December 1, 2001 inventory, which was compiled after plaintiff discarded property as a result of the 2.4 cubic feet limitation inspection. Defendant suggested plaintiff may have discarded all the alleged lost property items on December 1, 2001. Defendant maintained plaintiff threw away a “bunch of property” including multiple articles of clothing as well as other items. Defendant denied any of plaintiff’s rightfully owned property was lost or stolen while under the control of ManCI staff.

{¶6} 6) On April 28, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted he was the rightful owner of all property items claimed. Plaintiff denied he discarded any of the alleged missing articles on December 1, 2001. Plaintiff contended all items claimed were lost or stolen while under defendant's control. Plaintiff argued he is entitled to all damages claimed. Plaintiff submitted an affidavit from a fellow inmate, Charles Chaffins, who stated he witnessed the events of December 1, 2001 regarding the 2.4 cubic feet limit inspection of plaintiff's property. Chaffins related plaintiff showed him, another inmate, and an ManCI employee "documented proof that some of his belongings were missing." Chaffins also stated he observed plaintiff discarding, "a large amount of food items, yet no clothing, shoes, boots, or photo albums and tobacco products."

{¶7} 7) The trier of fact does not find the assertions of plaintiff and Charles Chaffins particularly persuasive.

CONCLUSIONS OF LAW

{¶8} 1) Plaintiff has no right to assert a claim for lost property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

{¶9} 2) 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, 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.

{¶10} 3) 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.

{¶11} 4) 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.

{¶12} 5) 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} 6) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen or lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶14} 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. 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:

Landra Shearer #234-893
P.O. Box 7010
Chillicothe, Ohio 45601

Plaintiff, Pro se

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

For Defendant

RDK/tad
5/29
Filed 6/11/03
Sent to S.C. reporter 7/3/03