



towels, and legal work were all returned. Defendant suggested plaintiff's property arrived at the SOCF property vault in three tubs and was then repackaged in two tubs to save shelf space.

{¶ 5} 5) Defendant submitted a copy of plaintiff's property inventory compiled on August 3, 2004. This inventory notes plaintiff's property was packed in three boxes and listed five towels, a pair of gym shoes, four pairs of undershorts, and various documents described as "letters" and "papers." One towel and two pairs of undershorts were designated as part of plaintiff's "J-2" bag which contained additional property items and was taken to plaintiff while he was housed in segregation. An additional property inventory dated August 7, 2004, includes a pair of sport shoes, four towels, three pairs of undershorts, and various letters and papers. This inventory contains the notation, "unable to determine current legal work at this time." Plaintiff signed this inventory form acknowledging all the listed property items had been returned to his possession.

{¶ 6} 6) Plaintiff, in his response to defendant's investigation report, related when he was taken to segregation on August 3, 2004, he was wearing a pair of Nike Air gym shoes and a pair of gym shorts which were turned over to an SOCF employee. Plaintiff further related these gym shoes and gym shorts were never recorded on his August 3, 2004, property inventory and were never returned to his possession. Plaintiff claimed he possessed two pairs of gym shoes. Additionally, plaintiff insisted his towel and trial transcripts were not returned to him after he left the segregation unit. Plaintiff contested defendant's assertion regarding his property being repackaged from three tubs to two. Plaintiff professed he possessed far too much property to fit into two containers. Plaintiff pointed out that both of his property inventories compiled by defendant on August 3, 2004, and August 7,

2004, note the property items had been stored in three containers. Plaintiff speculated the third tub containing his trial transcripts and towel, "got lost some where from being packed up and brought to the pack up room."

#### CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 5) In order to recover against a defendant in a tort action, if plaintiff produces evidence which furnishes a basis for only a guess, among different possibilities, as 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.

{¶ 12} 6) 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



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