

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
IN THE CLAIMS COMMISSION
CLERK'S OFFICE

2014 AUG 27 A 10:06

ALFONZO HARRIS #283284,)
) Claim No. T20131497
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,)
) Regular Docket
 Defendant.)

JUDGMENT FOR DEFENDANT AND DISMISSAL OF CLAIM

This claim for negligent care, custody or control of personal property proceeding on affidavits pursuant to Tenn. Code Ann. § 9-8-403(h) came before Robert N. Hibbett, Commissioner and judge of the facts and law. Although this is a Regular Docket Claim, subject to appeal, trials are not conducted on inmate property claims.

(h) Claims based on the negligent care, custody or control of personal property by persons in the legal custody of the state shall proceed on affidavits only, except where the commission determines that witnesses should be heard.
Tenn. Code Ann. § 9-8-403(h).

The Claimant, Alfonzo Harris, is an inmate in the custody of the Tennessee Department of Correction (TDOC). The Claimant alleges that his Wolverine

Boots were lost or stolen while he was in segregation due to the negligence of State employees. The Claimant has requested \$60.00 in damages from the State.

JURISDICTION

The authority of the Claims Commission to render damages is set forth by statute. If a claim falls outside of the categories specified in Tenn. Code Ann. § 9-8-307(a), then the State retains its immunity from suit, and a claimant may not seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). The Claims Commission has authority to adjudicate this matter under Tenn. Code Ann. § 9-8-307(a)(1)(F) concerning the negligent care, custody or control of personal property.

FINDINGS OF FACT

On or about May 1, 2013, the Claimant was found guilty of cell phone possession and was disciplined by being placed in segregated housing for ten days. Before being segregated, Claimant packed his belongings to be held by prison authorities until the end of his punishment. When he received his personal belongings after the ten days, his Wolverine Boots were not among his possessions.

Claimant has provided documentation showing that he did buy and receive a pair of Wolverine Boots from Union Supply Direct in April 2013.

However, there is no documentation to show what property was turned over to prison officials before his segregation or what he received back from prison officials afterwards.

CONCLUSIONS OF LAW

In order to establish a claim under Tenn. Code Ann. § 9-8-307(a)(1)(C) and (H), the Claimant must prove the elements of common law negligence: (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App. 2001).

The State has argued that the Claimant has not provided any documentary evidence in the form of TOMIS records or property room forms to show that a loss has occurred. The State has also proffered the affidavit of Dustin K. Mackin, Corrections Officer and Institutional Investigator for TDOC. The affidavit includes hearsay in that it contains a statement made by another state employee. That statement cannot be considered by the Tribunal.

Notwithstanding, the Tribunal finds that the Claimant has not shown State employees handled his property below their duty of care or that a loss occurred. The burden to provide evidence of negligence remains with the Claimant until

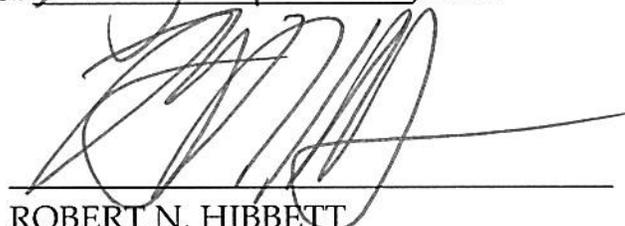
he proves a prima facie case supported by evidence. Under the facts presented to the Tribunal, it is not known what property was turned over to prison officials before Claimant's segregation. Therefore, it is impossible to know if the Wolverine Boots went missing while in the State's custody.

The Tribunal finds that the Claimant, Alfonzo Harris, has failed to prove, by preponderance of the evidence, that State of Tennessee officials or employees were negligent in the care, custody or control of his personal property. The Tribunal must respectfully dismiss his claim.

IT IS THEREFORE, ORDERED, DECREED, AND ADJUDGED:

1. That judgment is rendered to the State of Tennessee.
2. That this claim is respectfully dismissed.
3. That the court costs, if any, are taxed to the Claimant.
4. That this is a final judgment for purposes of appeal.

ENTERED this 25 day of August, 2014.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

ERIC FULLER
Attorney General's Office
P.O. Box 20207
Nashville, TN 37202-0207
(615) 532-2500

ALFONZO HARRIS #283284
T.C.I.X. (3A-204)
1499 R.W. Moore Memorial Hwy.
Only, TN 37140-4050

This 27 day of August, 2014.



PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission