

# 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

THOMAS MAXWELL

Plaintiff

v.

RICHLAND CORRECTIONAL  
INSTITUTION

Defendant

Case No. 2007-03935-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) On or about September 20, 2006, plaintiff, Thomas Maxwell, an inmate incarcerated at defendant, Richland Correctional Institution (“RiCI”), was transferred from the RiCI general population to a segregation unit. Plaintiff’s personal property was packed and delivered into the custody of RiCI staff incident to this transfer.

{¶2} 2) On or about September 26, 2006, plaintiff was released from segregation and his personal property was returned. Plaintiff asserted that after he regained possession of his property he discovered his typewriter would not function properly. Plaintiff maintained his typewriter was in good working order before it was packed and delivered into the custody of RiCI personnel. Plaintiff contended his typewriter was damaged at some time either when it was packed or when it was transported to the RiCI property vault. Consequently, plaintiff filed this complaint seeking to recover \$185.94, the replacement cost of a new typewriter. Plaintiff purchased the typewriter in 2002 at a cost of \$185.94. Plaintiff also requested loss of use damages in the amount of \$2,314.06, despite the fact he seeks recovery of the total purchase price of the typewriter. The filing fee was paid.

{¶3} 3) Plaintiff submitted written statements from fellow inmates Craig A. Riffle and Ronald E. Lutz, who both noted plaintiff’s typewriter was “in perfect working

order” during the morning hours of September 26, 2006, before the device was packed and delivered to the RiCI property vault. Both Riffle and Lutz related they had previously borrowed and used plaintiff’s typewriter.

{¶4} 4) Defendant acknowledged the typewriter does not function. Defendant related, “[w]hen the device is plugged in and the power switch is turned on the device is receiving no signs of power being (emitted) to the device.” However, defendant specifically denied the typewriter was broken while under the control of RiCI staff. RiCI personnel who handled the typewriter denied dropping the device. Photographs of the typewriter were taken after plaintiff complained about damage. Copies of the photographs were submitted. After examining the typewriter, defendant’s institutional inspector K. Rose observed he “was unable to locate any scratches, abrasions, and or cracks to the body of said typewriter to indicate a drop.” Rose also noted: “[T]here is a small chip missing on the upper right section of the clear plastic paper guard. This crack is approximately ½ inch by ½ inch. There are no other signs of trauma to the device.” The trier of fact, upon review of the photographs, cannot observe any physical damage depicted on the typewriter other than the minor damage on the upper right section of the clear plastic paper guard. The photographs do not show any damage consistent with the device being dropped or mishandled.

{¶5} 5) Defendant suggested the typewriter probably ceased functioning due to excessive use and wear and tear over a four and a half year period. Since plaintiff has acknowledged he loaned the typewriter to fellow inmates for their use, defendant also suggested the typewriter ceased functioning while in another inmate’s possession. Defendant pointed out the typewriter was over four years old and had been heavily used not just by plaintiff, but by other inmates. Defendant surmised the typewriter “could simply suffered some internal or mechanical failure.” Defendant contended plaintiff failed to prove the typewriter was damaged during the time he was housed in the RiCI segregation unit.

{¶6} 6) Furthermore, defendant asserted plaintiff violated internal institutional policy when he loaned his typewriter to fellow inmates for their use. Defendant related, “State of Ohio Policy 6I-PRP-0I (A6)<sup>1</sup> states Inmates shall not trade, sell, barter, loan, or

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<sup>1</sup> State of Ohio, Department of Rehabilitation and Correction Policy VI (A)(6) in reference to

give away any item of their personal property at any time.”

{¶17} 7) Defendant pointed out plaintiff signed his property inventory when he regained possession of his property from the RiCI vault. The “Property Receipt” section of the inventory plaintiff signed bears the acknowledgment “All my personal property that is listed on this inventory form has been returned to me and I was offered the opportunity to inspect it before leaving the vault.” Plaintiff regained possession of his typewriter on September 26, 2006, and on September 27, 2006 he filed a written complaint regarding damage to his typewriter. In this complaint plaintiff recorded he reported the damage to the RiCI 2<sup>nd</sup> shift Corrections Officer on September 26, 2006.

{¶18} 8) Defendant also disputed plaintiff’s damage claim. Defendant contended plaintiff’s damages should be confined to the fair market value of the typewriter or the cost of repair, whichever is less.<sup>2</sup> Defendant asserted plaintiff’s claim for loss of use of the typewriter is compensable based on the circumstances involved.

{¶19} 9) Plaintiff filed a response insisting his typewriter was damaged while under defendant’s control at sometime between September 20 and September 26, 2006. Plaintiff stated the missing chip on the clear plastic paper guard on his typewriter is evidence of damage to his typewriter. Plaintiff did not produce evidence to indicate how or when his typewriter was damaged.

#### CONCLUSIONS OF LAW

{¶10} 1) In a claim of this type for property damage, plaintiff’s damage claim is limited to the fair market value of the typewriter or the cost of repair amount, whichever

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Offender Personal Property states in pertinent part:

“Offenders shall not trade, sell, barter, loan, or give away any item of their state or personal property at any time. Offenders shall not make or facilitate commissary or vendor purchases for other offenders.”

Concomitantly, Ohio Adm. Code 5120-9-33(J) provides:

“(J) Inmates shall not trade, sell, barter, loan, or give away any personal property to another inmate. Inmates are responsible for immediately reporting a theft or loss and institutional personnel are responsible for conducting a timely investigation. Inmates may not order a food or sundry package for another inmate.”

is less. *Maloney v. Gen. Tire Sales* (1973), 34 Ohio App. 2d 177, 63 O.O. 2d 289, 296 N.E. 2d 831. Loss of use of damages are not compensable in a situation where personal property has been totally destroyed. *Kimmie v. Ohio Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2005-03849-AD, 2005-Ohio-4612.

{¶11} 2) 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.

{¶12} 3) 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.

{¶13} 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.

{¶14} 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.

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

{¶16} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶17} 8) Plaintiff has failed to show any causal connection between any damage to the typewriter and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction* (2003), Ct. of

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<sup>2</sup> See *Falter v. Toledo* (1959), 169 Ohio St. 238, 8 O.O. 2d 226, 158 N.E. 2d 893.

Cl. No. 2003-04236-AD, 2003-Ohio-3615.

{¶18} 9) Furthermore, an inmate plaintiff has no right to pursue a claim for damaged property in which he cannot prove 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. In the instant claim, plaintiff, by loaning the typewriter to fellow inmates, effectively relinquished all ownership rights in the property. See *Johnson v. Ohio Reformatory for Women*, Ct. of Cl. No. 2004-01087-AD, 2004-Ohio-4818.

{¶19} 10) When plaintiff loaned the typewriter, the device became impermissible property in accordance with defendant's policy. An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Plaintiff's claim for the typewriter damage is denied.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
3/18  
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