

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

DAVID B. TYLER

Plaintiff

v.

OHIO DEPT. OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2007-07299-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} Plaintiff, David B. Tyler, a former inmate under the custody of defendant, Department of Rehabilitation and Correction (“DRC”), filed this complaint alleging his personal property was lost on two separate occasions in 2007 while under the control of DRC personnel. Plaintiff stated he was transferred from defendant’s Toledo Correctional Institution (“ToCI”) to defendant’s London Correctional Institution (“LoCI”) on January 12, 2007. On March 23, 2007, plaintiff was transferred from LoCI to defendant’s Allen Correctional Institution (“ACI”). Then on April 23, 2007, plaintiff was transferred from ACI back to LoCI. Plaintiff was transferred again on July 3, 2007, when he went from LoCI to defendant’s Pickaway Correctional Institution (“PCI”). Plaintiff was once more subject to transfer when he was sent to defendant’s Madison Correctional Institution (“MaCI”) from PCI on August 15, 2007. Apparently, plaintiff transferred five times to various DRC institutions in an approximate seven-month period from January to August 2007. Incident to the first transfer on January 12, 2007, plaintiff’s personal property was packed and delivered into the custody of DRC personnel. Plaintiff

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{¶ 2} explained that due to his housing status at the various institutions where he was incarcerated from January to August 2007, he was denied access to his personal property, although the property was forwarded from institution to institution upon each transfer. However, plaintiff claimed he was separated from his property and the items remained under defendant's control from January 12, 2007 to August 19, 2007, the day he finally regained possession of his property after his transfer to MaCI. Plaintiff maintained that when he examined his returned property at MaCI, he discovered several items were missing. Plaintiff claimed his alleging missing property was lost while under the defendant's control at sometime from January 12, 2007 to August 19, 2007. Furthermore, plaintiff asserted the alleged missing property was valued at \$184.91 as reflected in the complaint.

{¶ 3} Additionally, in a separate matter, plaintiff alleged multiple property items he purchased at the ACI commissary on March 28, 2007 and April 4, 2007, were subsequently stolen from his empty cell while he was absent. Plaintiff recalled he was released from his cell for recreation at approximately 1:05 p.m. on April 9, 2007, and the items he had purchased from the ACI commissary were stored in two known paper bags in the rear of the cell. Plaintiff further recalled he was scheduled to go to segregation at approximately 1:30 p.m. on that same day and therefore requested his cell be secured. Plaintiff noted that when he reviewed his property inventory after being transferred to a segregation unit at ACI, he discovered the items he had left in his cell which were purchased from the ACI commissary were not listed on the inventory compiled incident to his transfer to segregation. Plaintiff related he immediately reported the missing property to ACI staff, then completed a Theft/Loss Report and subsequently filed a grievance. Apparently, the items purchased from the ACI commissary were never recovered and plaintiff consequently filed this complaint

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{¶ 4} seeking to recover \$59.32, the purchase price of the alleged missing items. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that amount along with his damage claim totaling \$244.23.

{¶ 5} Plaintiff's claimed property loss at ACI included the following: two bars of soap, one toothbrush, five disposable razors, one can of shaving cream, cotton swabs, twenty-five envelopes, a greeting card, two legal pads, one plastic spoon, two pouches of tobacco, six cans of root beer, one snack cake, two summer sausages, four instant soups, two mozzarella cheese products, one peanut butter and crackers, a bag of Tootsie Roll Pops, one Keefe coffee, a candy bar, one bag of corn chips, two bags of honey barbecue potato chips, ten bags of plain potato chips, two sunflower kernels, three TV Guide magazines, and one National Enquirer magazine. Plaintiff submitted copies of ACI commissary receipts which show he made purchases on March 28, 2007 and April 4, 2007, totaling \$72.08. All the alleged missing items, plus other items are listed on the commissary receipts submitted.

{¶ 6} In regard to plaintiff's allegations that his property was lost by defendant at some time from January 12, 2007 to August 19, 2007, the following items were claimed: one set of Koss headphones, one Sony walkman with earbuds, one GE universal remote control, one Elgin alarm clock, eight TV Guide magazines, twenty envelopes, ten manila envelopes, one permanent black marker, one can of black pepper, one bottle of over-the-counter pain medication, one aftershave lotion, two cotton swabs, one brushless shaving cream, four AA batteries, one pack of AAA batteries, earplugs, band aids, one comb, two mirrors, four bars of soap, one soap dish, two bottles of shampoo, two toothbrushes, two shoelaces, one box of Tide detergent, one box of Ajax detergent, one plastic tumbler, one deodorant, one plastic ruler, and one upper portion of a mug with a Cincinnati Bengals logo. Plaintiff submitted a copy of his property inventory compiled on January 12, 2007 at ToCI when his property was initially packed and

delivered to

{¶ 7} defendant. Plaintiff was present when his property was packed and he signed the inventory acknowledging the document reflected a “complete and accurate inventory” of all his property. All the property items allegedly lost at sometime from January 12, 2007 to August 19, 2007, with the exception of eight TV Guide magazines, are listed on the January 12, 2007 inventory. Plaintiff claimed the eight TV Guide magazines were mailed to ToCI after January 12, 2007, but were never forwarded to LoCI where plaintiff was incarcerated. Plaintiff filed a grievance at LoCI regarding the alleged failure by ToCI staff to forward his eight TV Guide magazines. In his grievance (dated February 20, 2007), plaintiff also claimed he had ordered an Elgin LCD alarm clock that had arrived in the mail at ToCI and ToCI personnel did not forward the clock to LoCI. Plaintiff’s January 12, 2007 property inventory contains listings of “Alarm Clock-Elgin 1” and “Clock-Elgin LCD 1.” The grievance filed at LoCI was not resolved in plaintiff’s favor.

{¶ 8} Defendant admitted liability for the loss of plaintiff’s Sony walkman in the amount of \$19.39. However, defendant denied liability for the remainder of the property loss claimed. Defendant maintained that all additional property claimed was returned to plaintiff’s possession. Defendant denied any additional property was lost or stolen while under the control of DRC personnel.

{¶ 9} On August 19, 2007, plaintiff filed a grievance at MaCI alleging he failed to receive all his property which had been stored under defendant’s control since January 12, 2007. The grievance was unresolved on procedural grounds. Defendant responded to a subsequent grievance by advising plaintiff was given most of the items he claimed were lost.

{¶ 10} On September 13, 2007 and on September 14, 2007, the property in plaintiff’s possession was packed by MaCI staff in preparation for plaintiff’s transfer from MaCI to PCI. Inventories listing the property packed were compiled. Defendant submitted copies of the September 13, 2007 and September 14, 2007 property inventories. Many property items plaintiff alleged were lost between January 12, 2007 to August 19, 2007 appear on the inventories. However, multiple claimed lost items do not appear on the inventories, although the items were listed on plaintiff’s January 12, 2007 property inventory. The property items relevant to this claim that are listed on the

September 13, 2007 and September 14, 2007 inventories include twenty-five envelopes, a marker, one cotton swab, two shaving cream, batteries, band aids, combs, mugs, six bars of soap, one shampoo, two toothbrushes, two boxes of Tide detergent, deodorant, and a plastic ruler. Property listed on the January 12, 2007 inventory that is not listed on the September 2007 inventories include Koss headphones, a GE remote, a Sony walkman, an Elgin alarm clock, manila envelopes, pepper, pain medication, aftershave, one cotton swab, ear plugs, mirrors, two bars of soap, one shampoo, shoelaces, Ajax detergent, and a tumbler.

{¶ 11} Defendant submitted a copy of plaintiff's property inventory compiled at ACI on April 9, 2007 when he was transferred to a segregation unit. From a review of this inventory, it does not appear that any of the items plaintiff purchased at the ACI commissary on March 28, 2007 and April 4, 2007 are listed. No property plaintiff claimed was lost or stolen while he was incarcerated at ACI is listed on the April 9, 2007 inventory.

CONCLUSIONS OF LAW

{¶ 12} 1) Copying costs are not compensable in a claim of this type. See *Carnail v. Dept. of Rehab. & Corr.*, Ct of Cl. No. 2007-06322-AD, 2008-Ohio-1207.

{¶ 13} 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.

{¶ 14} 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.

{¶ 15} 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.

{¶ 16} 5) Plaintiff's failure to prove delivery of eight TV Guide magazines to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 17} 6) 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.

{¶ 18} 7) 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, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court finds plaintiff's assertions persuasive in regard to the loss of the items he purchased in the ACI commissary.

{¶ 19} 8) Negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD; jud.

{¶ 20} 9) Furthermore, in regard to the loss of a set of headphones, a remote control, alarm clock, walkman, manila envelopes, pepper, pain medication, aftershave, one cotton swab, earplugs, mirrors, two bars of soap, one shampoo, two shoelaces, and one Ajax detergent, negligence on the part of defendant has been established. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 21} 10) Plaintiff has failed to prove, by a preponderance of the evidence, additional losses as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 22} 11) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239, 577 N.E. 2d 160.

{¶ 23} 12) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31.

{¶ 24} 13) The standard measure of damages for personal property is market value. *McDonald v. Ohio State University Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

{¶ 25} 14) The court finds defendant liable to plaintiff in the amount of \$125.00, plus the \$25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.



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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 plaintiff in the amount of \$150.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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