

# 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

ADEN D. FOGEL

Plaintiff

v.

RICHLAND CORRECTIONAL INSTITUTION

Defendant

Case No. 2006-08011-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} Plaintiff, Aden D. Fogel, a former inmate incarcerated at defendant, Richland Correctional Institution (“RiCI”), alleged RiCI mailroom personnel damaged photographs mailed to him. Specifically, plaintiff related his photographs were damaged when RiCI mailroom staff “used staples to secure the photographs back inside of the opened envelopes” after inspecting his mail for contraband.

{¶ 2} Plaintiff asserted eighty-one of his photographs were damaged or destroyed as a result of the acts of RiCI mailroom personnel. Consequently, plaintiff filed this complaint seeking to recover \$243.00 for the damage to his photographs. The filing fee was paid.

{¶ 3} Defendant denied any liability for the damage to plaintiffs’ photographs. Defendant acknowledged RiCI mailroom staff did staple envelopes containing photographs. Defendant also acknowledged plaintiff produced ten photographs with

damage from staples. Defendant contended plaintiff has not provided ample evidence to prove eighty-one of his photographs were damaged. Defendant argued plaintiff has not suffered a loss.

#### CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} Negligence on the part of defendant has been shown in respect to the damage to plaintiff's photographs. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 9} 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.

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

{¶ 11} In a situation where a damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original cost, replacement

cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282, 518 N.E. 2d 46.

{¶ 12} Notwithstanding the fact defendant has instituted value restrictions for property possessed by inmates, an inmate plaintiff may recover the market value of property damaged through the negligence of defendant if the value can be established within a reasonable degree of certainty. *Gaiter v. Lima Correctional Facility* (1988), 61 Ohio Misc. 2d 293, 578 N.E. 2d 895. A plaintiff is competent to testify in respect to the true value of his property. *Gaiter*.

{¶ 13} Defendant is liable to plaintiff for property damage in the amount of \$10.00, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *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 \$35.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa

8/20

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