

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

DWIGHT FREEMAN

Plaintiff

v.

SOUTHERN OHIO CORR. FACILITY

Defendant

Case No. 2007-07582-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On or about August 1, 2007, an employee of defendant, Southern Ohio Correctional Facility (SOCF), confiscated several property items from the possession of plaintiff, Dwight Freeman, an inmate incarcerated at SOCF. The confiscated property items were declared contraband and subsequently destroyed.

{¶ 2} 2) Plaintiff claimed that the confiscated property included nine deodorants, twenty packs of tuna fish, twenty-three bars of soap, seven AA batteries, twenty soups, and one bowl. Plaintiff filed this complaint seeking to recover \$73.40, the replacement cost of the confiscated property, which plaintiff contends that defendant destroyed without proper authority to carry out the property destruction. Payment of the filing fee was waived.

{¶ 3} 3) Defendant denied liability in this matter asserting that the confiscated property was contraband and plaintiff, consequently, does not have any right to pursue an action for the loss of property he had no right to possess. Defendant acknowledged that property was confiscated from plaintiff's possession and apparently destroyed.

Defendant explained that plaintiff had property in his possession in excess of the amounts allowable for inmate possession under internal policy regulations. Defendant maintained that plaintiff failed to prove he legitimately purchased the confiscated property items from the SOCF commissary.

{¶ 4} 4) Plaintiff filed a response pointing out that defendant failed to follow proper procedures when disposing of the confiscated property. Plaintiff insisted that he is entitled to all damages claimed for the confiscated and subsequently destroyed property.

CONCLUSIONS OF LAW

{¶ 5} 1) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 6} 2) "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court . . ." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d 744, 2003-Ohio-5333, 798 N.E. 2d 1121, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; and *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 5) An inmate plaintiff may recover for the loss of contraband in a situation where the contraband items have not been properly forfeited to the state. See *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. In the instant claim, the issue of confiscated items constituting contraband is not relevant. No declaration was made and no forfeiture authorization was obtained.

{¶ 10} 6) Negligence on the part of defendant has been shown in respect to all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 11} 7) The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds that the confiscated property was owned by plaintiff.

{¶ 12} 8) 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.

{¶ 13} 9) 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.

{¶ 14} 10) 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.

{¶ 15} 11) Notwithstanding the fact that 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*.

{¶ 16} 12) The court finds defendant liable to plaintiff in the amount of \$73.40.

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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 \$73.40. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
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