

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

MATTHEW J. PARMER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2010-08781-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Matthew J. Parmer, an inmate under the custody of defendant, Department of Rehabilitation and Correction (DRC), filed this action contending his guitar was damaged while under the control of DRC personnel when his property was transported on or about March 5, 2010 from the Marion Correctional Institution to the Dayton Correctional Institution. Plaintiff requested damages in the amount of \$250.00, the stated replacement value of his guitar. The filing fee was paid.

{¶ 2} 2) Defendant filed an investigation report admitting liability for the property loss and acknowledging plaintiff suffered damages in the amount of \$250.00.

{¶ 3} 3) Plaintiff filed a response expressing his agreement with defendant's investigation report in regard to damages. Plaintiff also requested reimbursement of the \$25.00 filing fee cost along with his damage claim.

CONCLUSIONS OF LAW

{¶ 4} 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, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 5} 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, ¶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.

{¶ 6} 3) 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} 4) 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} 5) Negligence on the part of defendant has been shown in respect to the issue protecting plaintiff’s property after he was transferred in March 2010. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD. Plaintiff has offered sufficient proof to establish his property was damaged while under the control of defendant’s personnel. *Ward v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2009-09043-AD, 2010-Ohio-4955.

{¶ 9} 6) Plaintiff has suffered damages in the amount of \$250.00, plus the \$25.00 filing fee, which may be awarded as 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 \$275.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
3/9
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