

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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LARRY BUMPHUS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2006-02412

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} This case was initially tried to the court on the issue of liability. The court subsequently issued a decision in favor of plaintiff. The case then proceeded to trial on the issue of damages.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Mansfield Correctional Institution (ManCI) pursuant to R.C. 5120.16. On March 31, 2005, while plaintiff was outside of ManCI for a court hearing, a box containing his personal property was mistakenly mailed from ManCI to his family. On June 30, 2005, plaintiff returned to ManCI and discovered that his property was missing. In late January 2006, the box containing plaintiff's property was returned to ManCI; however, plaintiff refused to take possession of it. The court found that plaintiff was entitled to damages for the loss of use of his property from June 30, 2005, until his property was returned, and for any cost he incurred to replace his property.

{¶ 3} A plaintiff bears the burden of proof on damages. *Henderson v. Spring Run Allotment* (1994), 99 Ohio App.3d 633, 641. “Ordinarily, the injured party must be able to prove not only that he suffered a particular type of injury, but also the pecuniary value thereof.” *Columbus Finance, Inc. v. Howard* (1975), 42 Ohio St.2d 178, 184, citing *Pryor v. Webber* (1970), 23 Ohio St.2d 104.

{¶ 4} In support of his claim for damages, plaintiff presented his own testimony and an inmate property record dated February 15, 2006, that provides an inventory of the box containing plaintiff’s property. (Plaintiff’s Exhibit 1.) Plaintiff asserted that the value of the property in the box is approximately \$800.

{¶ 5} Plaintiff testified that when he left ManCI in March 2005 he surrendered his personal property to the “property vault” at ManCI. According to plaintiff, the items surrendered included family photographs, a 1924 edition of the King James Bible, two prison litigation manuals, a book titled “Legal Writing,” a lamp, a fan, and clothing.

{¶ 6} Correctional Lieutenant Pamela Shaw testified that she was the employee that packed plaintiff’s property in the box and mailed it out of the institution on March 31, 2005. She testified that the box contained underwear, t-shirts, socks, hygiene items including deodorant and toothpaste, and legal papers. According to Shaw the box did not contain a lamp or a fan.

{¶ 7} The property in the box returned to ManCI as of February 15, 2006, included the following: four pencils; three pairs of state-issue gloves; five state-issue towels; two bowls with lids; one pair of shower shoes; seven pairs of socks; two thermal tops; eight undershirts; nine pairs of undershorts; one white washcloth; one brush; one stick of deodorant; one container of hair grease; one bottle of lotion; two nail clippers; one and one-half bars of soap; one toothbrush case; one tube of toothpaste; two lighters; one liquid correction pen; one cigarette roller; one padlock; one tube of analgesic balm; one container of petroleum jelly; one container of bath powder; one tube of medicated cream; one container of Quinsana powder; one tube of antibiotic

ointment; one bottle of cologne; one tube of Cortizone cream; and one pair of gray gym shorts. No values are given for the items. (Plaintiff's Exhibit 1.)

{¶ 8} Plaintiff did not provide any evidence or offer any testimony as to which of his personal items he had replaced nor did he specify whether the items were "state-issue" which means that they were replaced by defendant free of charge.

{¶ 9} An accounting of plaintiff's commissary purchases between June 30, 2005, and February 15, 2006, shows that plaintiff spent \$89.98 on items from the commissary. However, these purchases were not itemized and plaintiff did not testify that any of the purchases were made to replace property that was mailed out of the institution.

{¶ 10} "[T]he damages that result from an alleged wrong must be shown with reasonable certainty, and cannot be based upon mere speculation or conjecture." *Henderson*, at 642, quoting *Wagenheim v. Alexander Grant Co.* (1983), 19 Ohio App.3d 7, 17.

{¶ 11} Based upon the foregoing, the court finds that plaintiff failed to present any credible evidence as to the property he was required to replace at his own expense nor did plaintiff quantify the extent to which he suffered the loss of use of his property. Consequently, any damage award by the court would be "based upon mere speculation or conjecture." Accordingly, it is recommended that no award of damages be made.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(I). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

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Magistrate Steven A. Larson

MR/cmd
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