

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

ROBERT L. ATKINSON

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-10315-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Robert L. Atkinson, an inmate incarcerated at defendant's Warren Correctional Institution (WCI), alleged that his personal property was "[n]egligently destroyed, discarded, lost (or) misplaced" incident to a transfer to defendant's Lebanon Correctional Institution (LeCI) on or about July 16, 2008.

{¶ 2} 2) Plaintiff related that his personal property was inventoried, packed, and forwarded from WCI to LeCI. According to plaintiff, when he examined the written inventory of his property compiled by WCI staff, he complained that several items were missing and had apparently not been packed. Plaintiff asserted that the alleged missing property items include: a CD player, headphones, sixteen CDs, one silver chain with attached cross, one pair of prescription eyeglasses, two pairs of Reebok gym shoes, seventy-five photographs, five photo albums, one pair of boots (Timberland), one wedding ring, ten bottles of vitamins, approximately three thousand documents consisting of legal materials, documents, mail, letters, contracts, medical passes, medical prescription orders restrictions, and medication documents, socks, underwear,

t-shirts, commissary articles, one gold and silver watch, photographs of fellow inmates, two baseball caps, thirty envelopes, one \$30.00 money order, one case for eyeglasses, religious books and materials, and three-thousand pages of additional legal documents “sent from attorneys.”

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$2,500.00, the estimated value of his alleged missing property. Plaintiff submitted a copy of his property inventory compiled on July 16, 2008. Property items listed on this inventory relevant to this claim include the following: one pair of reading glasses, a CD player, headphones, sixteen CDs, one case for eyeglasses, one watch, one wedding ring, one chain with medallion, two photo albums, seventy-five assorted photographs, thirty-five envelopes, one baseball hat, one hat listed as contraband, one pair of boots (state issue), two pairs of Reebok shoes, six pairs of socks, seven undershirts, seven undershorts, three vitamins, books, letters, and papers. Plaintiff submitted a copy of a second property inventory compiled at WCI on July 16, 2008 incident to his transfer. Property items listed on this inventory relevant to this claim include the following: one pair of reading glasses, books, letters, papers, photo albums, assorted photographs, two pairs of Reebok gym shoes, two baseball hats, six bottles of vitamins, eight pairs of socks, ten undershirts, ten undershorts, one pair of black boots (state issue), and numerous food items. The \$25.00 filing fee was paid.

{¶ 4} 4) Defendant denied any liability in this matter. Defendant acknowledged that three bottles of vitamins owned by plaintiff were missing from his pack-up when he transferred from WCI to LeCI. Defendant claimed that records at WCI were checked “and no certificates of ownership or purchase receipts were found in regards to the alleged missing items.” Defendant essentially argued that plaintiff failed to offer proof he actually owned any of the claimed missing property. Furthermore, defendant denied that any property owned by plaintiff was lost, misplaced, or destroyed while under the control of WCI staff. Defendant advised that the July 16, 2008 inventory plaintiff submitted with his complaint “lists reading glasses, a CD player and headphones, 16 CD’s, two photo albums, a chain with medallion, and numerous clothing items.” It should be pointed out that this inventory also lists a glasses case, a wedding ring, a watch, letters, books, papers, seventy-five photographs, thirty-five envelopes, and two pairs of Reebok gym shoes.

{¶ 5} 5) Plaintiff filed a response explaining that he has “been in detention since July 16, 08 before and after WCI transferred plaintiff to LeCI segregation” and due to his detention status he has not had access to his property since July 16, 2008. Plaintiff advised that a submitted property inventory establishes WCI staff took possession on July 16, 2008 of many of the property items claimed and a second submitted inventory dated September 4, 2008 (when plaintiff was transferred from LeCI to the Southern Ohio Correctional Facility) shows multiple property items packed on July 16, 2008 were missing. Plaintiff insisted that he was the rightful owner of all property items claimed. Plaintiff reasserted his claim that his property was worth \$2,500.00 and requested the court grant his total damage claim.

{¶ 6} 6) From a review of the property inventories submitted and considering the fact that plaintiff did not have access to his property from July 16, 2008 until after his September 4, 2008 transfer to the Southern Ohio Correctional Facility, the trier of fact finds that multiple items of plaintiff’s property were lost while under the control of WCI personnel. Plaintiff has shown the following property items were lost: one chain with a religious medallion, one wedding ring, a pair of eyeglasses, one pair of gym shoes, one bottle of vitamins, various commissary items (foodstuffs), two baseball caps, envelopes, a compact disc player, headphones, and fourteen compact discs.

CONCLUSIONS OF LAW

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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. Plaintiff has offered sufficient evidence to establish that defendant negligently failed to exercise ordinary care over multiple property items that came under the control of WCI staff.

{¶ 11} 5) 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 does not find defendant's assertions regarding ownership or loss issues to be particularly persuasive. Conversely, the court finds plaintiff's assertions regarding the facts of this claim to be persuasive.

{¶ 12} 6) 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} 7) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

{¶ 14} 8) In a situation where 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} 9) Plaintiff suffered damages in the amount of \$500.00, plus the \$25.00 filing fee which may be awarded as compensable costs pursuant to R.C. 2335.19. *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 \$525.00, which includes the filing fee. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa

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