

for an additional \$1,000.00 in damages is denied and shall not be further addressed. The filing fee was paid.

{¶ 3} 3) Defendant admitted liability for the loss of plaintiff's television set, radio, and fan. Defendant acknowledged these items were destroyed. Defendant professed damages for the destroyed property items should be set at \$159.69, the total replacement cost for a television set, radio, and fan listed in the approved vendor catalogue and institution commissary. Defendant denied a typewriter was lost or destroyed. Defendant related plaintiff's typewriter was packed and is stored in the institution vault.

{¶ 4} 4) Additionally, evidence has shown NCCI employees confiscated clothing, hygiene items, gloves, and hats from plaintiff's possession. These confiscated items were declared contraband and were forfeited to defendant pursuant to an order issued by the Common Pleas Court of Marion County. The subject television set, fan, and radio were also forfeited to defendant pursuant to this court order and signed by a judge of the Common Pleas Court of Marion County. The radio, fan, and television set which were confiscated in December, 2004, were subsequently destroyed by NCCI personnel. Confiscated clothing, gloves, hygiene items, and hats that were included in the court issued forfeiture order were also destroyed by defendant.

{¶ 5} 5) In his response to defendant's investigation report, plaintiff asserted defendant should bear liability for the loss of all property items claimed, despite the fact the seized property was subject to a properly obtain forfeiture order. Plaintiff maintained his typewriter was damaged while under the control of NCCI staff. Plaintiff claimed the typewriter does not function. Plaintiff did not submit any evidence to establish his typewriter was damaged while under the custody and care of defendant's

employees.

CONCLUSIONS OF LAW

{¶ 6} 1) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶ 7} 2) However, in the instant claim, defendant acted with court ordered authority to destroy all the confiscated property. An inmate plaintiff is barred from recovering the value of confiscated property formally forfeited and subsequently destroyed pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for all the destroyed confiscated property is dismissed.

{¶ 8} 3) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the 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.

{¶ 9} 4) Plaintiff has failed to prove, by a preponderance of the evidence, his typewriter was broken as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

IN THE COURT OF CLAIMS OF OHIO

EDWARD KIMMIE :
Plaintiff :
v. : CASE NO. 2005-03849-AD

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

:

ENTRY OF ADMINISTRATIVE
DETERMINATION

:

Defendant

: : : : : : : : : : : : : : :

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 defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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