

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

ERIC BRUNNER

Plaintiff

v.

NORTH CENTRAL CORR. INST.

Defendant

Case No. 2006-08020-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On or about July 29, 2006, plaintiff, Eric Brunner, an inmate incarcerated at defendant, North Central Correctional Institution (“NCCI”), was transferred from the institution’s general population to a segregation unit.

{¶2} 2) Plaintiff’s personal property was inventoried, packed, and delivered into the custody of NCCI staff incident to his transfer.

{¶3} 3) Plaintiff asserted that when he was released from segregation and he regained possession of his property, he discovered multiple items of clothing were missing from his returned property. Plaintiff claimed the following items were missing: two t-shirts, two shirts, two pairs of sweat pants, one sweat shirt, two thermal underwear tops, one hat, three pairs of socks, two pairs of undershorts, one pair of shower shoes, one pair of boots, one pair of thermal underwear bottoms, one blanket, and one adapter. Plaintiff recalled he was told his clothing had been confiscated and declared contraband. Plaintiff related he was issued a conduct report for possession of contraband. Plaintiff maintained the confiscated property items were subsequently destroyed without any authorization.

{¶4} 4) Plaintiff alleged his property was improperly destroyed. Consequently, plaintiff filed this complaint seeking to recover \$180.30, the estimated

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replacement value of his property claimed. Payment of the filing fee was waived.

{¶5} 5) Defendant acknowledged the following property items were confiscated from plaintiff's possession: two shirts, two t-shirts, two pairs of sweat pants, two thermal underwear tops, one hat, one adapter, three pairs of socks, two pairs of undershorts, one pair of shower shoes, one pair of boots, one pair of thermal underwear bottoms, and two blankets, one blue, one yellow. The confiscated property was classified as contraband and plaintiff was issued a conduct report for possession of contraband. The property items were declared contraband due to the fact the items would not fit in plaintiff's locker box and therefore, exceeded defendant's internal regulations regarding space limitations for inmate property possession. Defendant recorded plaintiff was given the opportunity to mail the declared contraband out of the institution. However, plaintiff did not have sufficient funds in his inmate account to cover postage costs. Therefore, the property items were destroyed by NCCI personnel. Defendant contended plaintiff agreed to and authorized the destruction of the declared contraband. Defendant did not offer any documentation to establish plaintiff agreed to or authorized the destruction of the declared contraband articles.

{¶6} 6) Plaintiff filed a response insisting he never agreed to the destruction of his confiscated property. Plaintiff asserted NCCI employee, Sgt. Wilson, destroyed

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his property without any authorization, acting on her own volition. Plaintiff noted he never signed any paperwork authorizing either the mailing or the destruction of the confiscated property. The file is devoid of any authorization document bearing plaintiff's signature.

CONCLUSIONS OF LAW

{¶7} 1) Defendant argued the items confiscated from plaintiff were destroyed in accordance with the provisions of the Ohio Administrative Code, section 5120-9-55(C).

{¶8} Ohio Adm. Code 5120-9-55(C) provides:

{¶9} "(C) Disposition of contraband: any items considered contraband under this rule may be confiscated.

{¶10} "(1) Minor contraband.

{¶11} "(a) When appropriate, such items should be returned to their proper locations or to their original owners. However, if the item came into the inmate's possession through a violation of the rules by the original owner, such item may not be returned to the owner, if the original owner is an inmate.

{¶12} "(b) Minor contraband received in the mail may be returned to the sender if the inmate agrees to pay postage costs.

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{¶13} “(c) Minor contraband, valued at one hundred dollars or less, may be destroyed, donated, or utilized by the institution for training or other official purposes by the order of the warden when the institution has attempted to contact or identify the owner of the personal property and those attempts have been unsuccessful or *the inmate who owns the personal property agrees in writing to the disposal of the property in question.* (Emphasis added.)

{¶14} “(d) Minor contraband, valued at over one hundred dollars, may not be returned to the original owner if either an inmate or unknown and may not be returned to sender, *may be destroyed or utilized by the institution for training or other official purposes upon the issuance of an order of forfeiture by the court of common pleas in the county in which the institution is located. The warden may file a petition for forfeiture with the court, asking the order be issued. The petition shall attach a list of the property involved and shall state briefly why the property cannot be returned.*” (Emphasis added.)

{¶15} 2) It has been previous held, 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; *Wooden v. Ohio Dept. of Rehab. & Corr.*,

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Ct. of Cl. No. 2004-01958-AD, 2004-Ohio-4820; *Hemsley v. N. Cent. Correctional Inst.*,
Ct. of Cl. No. 2005-03946-AD, 2005-Ohio-4613; *Mayfield v. Richland Correctional Inst.*,
Ct. of Cl. No. 2005-07976-AD, 2006-Ohio-358.

{¶16} 3) 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, 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. The trier of fact does not find defendant's assertions particularly persuasive in respect to plaintiff authorizing the disposition of his confiscated property items.

{¶17} 4) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD. Defendant is liable to plaintiff for the damage amount claimed.

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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

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of plaintiff in the amount of \$180.30. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Eric Brunner, #A322-857
670 Marion-Williamsport Road E.
Marion, Ohio 43301-1812

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa
8/17
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