

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

SCOTT A. WAGNER

Plaintiff

v.

TOLEDO CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-01789-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On December 23, 2005, plaintiff, Scott A. Wagner, an inmate incarcerated at defendant, Toledo Correctional Institution (“ToCI”), was transferred from the institution’s general population to a segregation unit.

{¶2} 2) Incident to plaintiff’s transfer, his personal property was inventoried, packed, and delivered into defendant’s custody. The packed property remained in defendant’s custody until January 20, 2006, when plaintiff was released from segregation and his property was returned.

{¶3} 3) Plaintiff claimed that when he regained possession of his property he discovered his typewriter was damaged and his pillow, laundry detergent and seven colas were missing from his returned items. Consequently, plaintiff filed this complaint seeking to recover \$254.00, the total replacement cost of a new typewriter, plus \$12.35, the stated replacement cost of laundry soap, a pillow, and seven colas. Plaintiff provided evidence establishing he purchased a Smith Corona typewriter on April 13, 2004, for \$104.95, plus shipping. As of January 1, 2007, inmates are permitted to purchase Swintec model typewriters, which have a retail purchase price of \$250.00, plus shipping. The filing fee was paid.

{¶4} 4) Defendant acknowledged taking possession of plaintiff's property on December 23, 2005. Defendant denied any of plaintiff's property was damaged or lost while under the control of ToCI staff, although defendant conceded plaintiff's typewriter is damaged and remains in plaintiff's possession. Defendant explained plaintiff is currently incarcerated at the Southern Ohio Correctional Facility ("SOCF") and his typewriter was transferred along with his other property from ToCI to SOCF. Defendant maintained the typewriter arrived at SOCF in an undamaged state. Defendant noted plaintiff did not file an informal complaint concerning missing or damaged property until on or about July 5, 2006, several months after ToCI personnel received custody of his property. Defendant asserted the pillow plaintiff claimed as lost was a state issue item and not subject to reimbursement for loss. Defendant disputed plaintiff's assertion that he was the rightful owner of seven colas, since he could not produce a commissary receipt for the purchase of the items. Defendant claimed plaintiff's laundry soap was packed and returned to plaintiff. Defendant denied plaintiff's typewriter was damaged by any personnel at either ToCI or SOCF.

{¶5} 5) Plaintiff filed a response insisting he owned all the property items claimed. Plaintiff also reasserted his typewriter was damaged while stored in the ToCI property vault. Plaintiff related that when he was released from segregation on January 20, 2006, he, "noticed several heavy boxes had been placed by the defendant on top of the plaintiff's typewriter." Plaintiff further related that after seeing the manner in which his typewriter had been stored he immediately examined the typewriter and discovered the case had been cracked. Plaintiff stated he subsequently discovered the typewriter would not function. Plaintiff maintained he also realized at this time that his pillow, laundry soap, and colas were missing from his returned property items. Plaintiff maintained he promptly reported the fact he had missing and damaged property to ToCI employee, Officer Greyson. Plaintiff observed he later filed several written complaints about his missing and damaged property with ToCI staff. Plaintiff contended he did not receive any response from ToCI staff regarding these complaints so he therefore

initiated the July 5, 2006, complaint referred to by defendant. Plaintiff argued he should be entitled to all damages claimed for his missing property and broken typewriter. Plaintiff again acknowledged he purchased the typewriter in April, 2004, for \$104.95. However, plaintiff reasoned he should be entitled to receive the current replacement cost of a new different typewriter (\$254.00), rather than the market value of a typewriter that was originally purchased new for \$104.95 and was over twenty months old at the time of the claimed loss.

{¶6} 6) On July 19, 2007, defendant filed a document in reply to plaintiff's response wherein defendant admitted liability for the loss of the items claimed, seven cans of cola, laundry detergent, and a pillow. Defendant acknowledged total damages for these items in the amount of \$10.86. The amount of acknowledged damages differs from plaintiff's original claim due to the fact plaintiff first claimed his pillow was worth \$8.00 and then in his response admitted that he purchased the pillow for \$6.51. The damage amounts for the colas and detergent have remained unaltered from plaintiff's original request.

{¶7} 7) Defendant again admitted plaintiff's typewriter is damaged. Defendant's records show plaintiff's typewriter was transferred from ToCI to SOCF on July 14, 2006, and SOCF staff issued a title for the typewriter. Defendant noted the typewriter should not have been titled, but rather should have been confiscated if signs of damage were observed. Defendant admitted documentation exists to establish plaintiff did complain in writing about damage to his typewriter on July 5, 2006, nine days before the property items was transferred from ToCI to SOCF. Defendant dismissed plaintiff's other earlier written submissions regarding damage to his typewriter as inconclusive evidence to establish when the damage to the typewriter occurred. Defendant argued plaintiff failed to produce sufficient evidence to prove his typewriter was damaged while stored under the care of ToCI staff.

{¶8} 8) Additionally, defendant again disputed plaintiff's damage claim amount for the typewriter. Defendant stated plaintiff is only entitled to the cost of

repairing his typewriter or fair market value, whichever is less.¹

{¶19} 9) Plaintiff asserted the typewriter is nonfunctional and incapable of being repaired.

{¶10} 10) On August 3, 2007, plaintiff filed a motion for extension of time to respond to defendant's July 19, 2007, filing.

{¶11} 11) On September 10, 2007, plaintiff filed a response to defendant's reply. Plaintiff expressed his agreement with defendant concerning the loss of his commissary items and pillow, however, plaintiff asserts he should receive damages for his typewriter which will allow him to purchase a new typewriter. Plaintiff reasons that this will be the only way to compensate him for the loss of his damaged typewriter.

CONCLUSIONS OF LAW

{¶12} 1) 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.

{¶13} 2) 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.

{¶14} 3) 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.

{¶15} 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.

{¶16} 5) The credibility of witnesses and the weight attributable to their

¹ See *Falter v. Toledo* (1959), 169 Ohio St. 238, 8 O.O. 2d 226, 158 N.E. 2d 893.

testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 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, 197 N.E. 2d 598. The court finds plaintiff's assertions persuasive in regard to his claims for both property loss and property damage.

{¶17} 6) Negligence on the part of defendant has been shown in respect to plaintiff's claims for loss and damage. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶18} 7) 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.

{¶19} 8) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31.

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

{¶21} 10) 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 costs, 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.

{¶22} 11) The court finds defendant liable to plaintiff in the amount of \$90.00, plus the \$25.00 filing fee as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587

Case No. 2007-01789-AD	- 1 -	MEMORANDUM DECISION
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- 1 -

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Plaintiff's motion for extension of time is DENIED. 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 \$115.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Scott A. Wagner, #455-592

Gregory C. Trout, Chief Counsel

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RDK/laa
8/9
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