

[Cite as *Smith v. Dept. of Rehab. & Corr.*, 2017-Ohio-9441.]

JASON SMITH

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00762-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Jason Smith, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on May 19, 2016, while he was housed at defendant’s Chillicothe Correctional Institution (“CCI”), around noon he was sent to segregation. At that time a Correctional Officer (“CO”) packed his property. Approximately eight hours later he was allowed to inspect the pack-up, but refused to sign since approximately \$161.00 of his personal property was missing.

{¶2} Plaintiff presented an Inmate Property Record dated May 19, 2016, the day he was sent to segregation. A note on the record indicated that plaintiff refused to sign the Inmate Property Record since approximately \$161.00 in food items are missing. On the same day, plaintiff filed an Inmate Property Theft/Loss Report, which lists the following property items as missing: Kool-Aid, pastries, Little Debbie’s, summer sausage, chips, cheese, Ritz/Saltine crackers, dip, cheese spread, gum, batteries, coffee, wraps, Velveeta, bagels, and cookies.

{¶3} Plaintiff submitted a copy of an Invoice from Union Supply Direct dated May 16, 2016, for the purchase of a variety of food items. The relevant purchases total \$119.35.

{¶4} Plaintiff submitted a copy of his inmate sales receipt from purchases in the commissary on May 18, 2016, which totaled \$46.88. It should be noted that the toothbrush, razors, gum, and laundry detergent which plaintiff purchased on May 18, 2016, were included on the Inmate Property Record of May 19, 2016, but none of the other commissary items he purchased the same day.

{¶5} Plaintiff submitted an Inmate Property Theft/Loss Report Summary dated May 23, 2016 and signed by Sgt. Mougey which stated:

{¶6} “Sir on 5-23-16 I Sgt. D. Mougey received a loss theft report from inmate Smith 717-946 stating that when his pack up was brought to him in restrictive housing he was missing several items and he had refused to sign his back {sic} up slip and a theft report was filled out. Upon investigating the Loss/Theft I Sgt D. Mougey did in fact find out that inmate Smith 717-946 did in fact receive a food box on 5-18-16 and on 5-18-16 did spend 46.88 in the commissary. The property could not be located and the cameras could not be reviewed.”

{¶7} Defendant submitted an investigation report denying liability. Defendant contends that plaintiff's missing property was not present during the pack up. Defendant submitted the Inmate Property Record dated May 19, 2016 to prove plaintiff did not possess the property in question, however, this Record was not signed by plaintiff since it was created after plaintiff was sent to segregation. Furthermore, ODRC's Logbook for May 19th, revealed the following “5/19/2016 1:14:00 PM inmates smith (717-946) and inmate Matthew ii (647-447) taken to seg pack ups secured in d-1 bathroom” It should be noted that the Inmate Property Record was not completed by defendant's personnel until 7:20 PM the same day.

{¶8} Plaintiff filed a response to defendant's investigation report. Plaintiff reiterated that he was sent to segregation at 12:00 PM while his pack up was not completed until 1:14 PM. Plaintiff asserted it was at this time when defendant's agents

controlled his property that the loss occurred. Plaintiff requested judgment be granted in his favor.

CONCLUSIONS OF LAW

{¶9} In order to prevail, in a claim of negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that it 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.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶10} "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 (2nd Dist.), citing *Miller v. Paulson*, 97 Ohio App.3d 217, 221, 646 N.E.2d 521 (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989).

{¶11} This court in *Mullett v. Department of Correction*, 76-0292-AD (1976), 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.

{¶12} 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*, 76-0368-AD (1977).

{¶13} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant's conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶14} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), 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*, 176 Ohio St. 61,

197 N.E.2d 548 (1964). The court finds plaintiff's statement persuasive. Furthermore, plaintiff's Inmate Property Record of May 19, 2016, revealed that some of the items he purchased at the commissary on the day before were listed on the Record.

{¶15} Defendant has a duty to use ordinary care in packing or storing property even if it is due to disciplinary confinement. *Gray v. Department of Rehabilitation and Correction*, 84-01577-AD aff'd jud (1985).

{¶16} "When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Department of Rehabilitation and Correction*, 85-01562-AD (July 26, 1985), Ct. of Cl. 85-01562-AD, unreported. 'A bailment is defined as a delivery of something * * * by one party to another, to be held according to the purpose or object of the delivery, and to be returned * * * when that purpose is accomplished.' (Footnotes omitted.) 8 Ohio Jurisprudence 3d (1978), 401, Bailments, Section 2." *Bacote v. Ohio Department of Rehabilitation and Correction*, 61 Ohio Misc.2d 284, 578 N.E.2d 565 (Ct. of Cl. 1988). A bailment relationship was created when ODRC's agent removed plaintiff and sent him to segregation. At that time ODRC's agents were responsible to secure plaintiff's property and protect it from loss.

{¶17} Negligence on the part of the defendant has been shown in respect to the loss of plaintiff's commissary items. *Baisden v. Southern Ohio Correctional Facility*, 76-0617-AD (1977); *Stewart v. Ohio National Guard*, 78-0342-AD (1979).

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

{¶19} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶20} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App.3d 42, 495 N.E.2d 462 (10th Dist. 1985). 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*, 102 Ohio App.3d 782, 658 N.E.2d 31 (12th Dist. 1995). While this court finds plaintiff suffered the loss of food items purchased from Union Supply Direct in the amount of \$119.35 and commissary items purchased on May 18, 2016, with the exception of a toothbrush, gum, and laundry detergent which were included on the Inmate Property Record of May 19, 2016. Therefore, plaintiff's commissary loss totals \$43.43.

{¶21} Therefore, plaintiff is granted judgment in the amount of \$162.78.

JASON SMITH

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00762-AD

Deputy Clerk Daniel R. Borchert

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 \$162.78. Court costs are assessed against defendant.

Case No. 2016-00762-AD

-6-

MEMORANDUM DECISION

DANIEL R. BORCHERT
Deputy Clerk

Filed 2/14/17
Sent to S.C. Reporter 5/15/18