

[Cite as *Hinton v. Dept. of Rehab. & Corr.*, 2017-Ohio-9442.]

MORRIS K. HINTON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00703-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Morris Hinton, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted while he was housed at defendant’s Chillicothe Correctional Institution (“CCI”), on May 10 through 12, 2016, he was not allowed access to books he ordered and they were subsequently destroyed contrary to ODRC’s rules and policies.

{¶2} Plaintiff seeks damages for the loss of the books “Lean Farms,” \$24.16; Getting Your Hopes Up!, \$11.99 and two Sharpie Hi-liters, \$3.00, plus \$5.00 for out-of-pocket expenses to pursue this action. Plaintiff’s total damages equal \$44.15. Plaintiff was not required to submit the \$25.00 filing fee.

{¶3} Plaintiff submitted a copy of an order confirmation from Amazon evidencing that Beth Nazarene Church sent plaintiff the Lean Farm. An order history from Christian book.com which revealed Wayne & Ruth Thomas sent plaintiff a copy of Get Your Hopes Up!

{¶4} Plaintiff submitted a copy of a Notice of Unauthorized Item Received dated May 10, 2016, determining the Lean Farm was contraband since “Book not purchased by Inmate.” A second Notice of Unauthorized Item Received dated May 12, 2016, finding Get Your Hopes Up! as contraband for the same reason.

{¶5} Plaintiff submitted an Informal Complaint Response from Lt. W. White, which related the reason plaintiff was not allowed to have the books in question was not due to their content but rather that the items were not purchased by the inmate and accordingly they were considered unauthorized pursuant to OAR 5120-9-33.

{¶6} Plaintiff submitted a Personal A/C Withdrawal Check Out-Slip dated July 27, 2016, which revealed plaintiff ordered a book Healing for Damaged Emotions which contained two yellow hi-liters. This purchase was made from Love Packages and approved by defendant's personnel.

{¶7} Defendant filed an investigation report denying liability. Defendant asserted the content of the books in question is not an issue but rather the way they entered the institution. ODRC cites to OAR 5120-9-19(B(2) which states: "(B) An inmate may receive a reasonable number of printed materials subject to the following limitations:

"(2) Printed materials may be received in reasonable quantities; but only, directly from a publisher or distributor. Inmates may receive printed materials from other sources (e.g., family, friends, etc.) only with the prior approval of the managing officer or designee."

{¶8} Defendant argues the two books in question were deemed contraband and they were ordered by outside parties from non-approved vendors. Furthermore, plaintiff was given the option to either send the books out of the institution or have them destroyed. Since plaintiff refused to make a decision the books were destroyed pursuant to OAR 5120-9-55 on May 24, 2016.

{¶9} Plaintiff submitted a response to defendant's investigation report. Initially, plaintiff disagrees with defendant's position that OAR 5120-9-33(E) controls this situation, rather plaintiff contends OAR 5120-9-19(B) is the controlling administrative rule. Furthermore, plaintiff contended that the rule required books come directly from a publisher or distributor, which happened in this case, and OAR 5120-9-19 does not

require that the purchase be made by the inmate. Plaintiff asserted defendant's personnel did not follow the guidelines as outlined in the Administrative Code and the books should have been processed in conjunction with OAC 5120-9-19, which they were not.

{¶10} Furthermore, plaintiff asserted the holding in *Parish v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. 2007-06934-AD, 2008-Ohio-5151, supports his position. Accordingly, plaintiff requests judgment be granted in his favor.

CONCLUSIONS OF LAW

{¶11} A review of defendant's Notice of Unauthorized Item Received form reveals plaintiff's books were withheld in accordance with OAR 5120-9-17.

{¶12} However, OAR 5120-9-17 concerns mail, legal mail, and electronic mail, but does not concern the receipt of books.

{¶13} OAC 5120-9-19(A)(B)(1)(2) states:

"(A) As used in this rule, 'printed materials' means any publication, document or record including, but not limited to, the following: Newspapers, magazines, pamphlets, books, photographs, drawings, and prerecorded magnetic audio tapes. The term printed material does not include either personal letters advertising mail as defined in Administrative Rule 5120-9-17 (J) incoming mail.

"(B) An inmate may receive a reasonable number of printed materials subject to the following limitations:

"(1) All printed materials are subject to security inspection and review.

"(2) Printed materials may be received in reasonable quantities; but only, directly from a publisher or distributor. Inmates may receive printed materials from other sources (e.g., family, friends, etc.) only with the prior approval of the managing officer or designee."

{¶14} 75-MAL-02 in pertinent part states:

"This policy applies to all inmates and staff of the Department of Rehabilitation and Correction and particularly to mailroom screeners who process inmate mail and other staff who are responsible for reviewing or screening printed material intended for inmates. **"Printed Materials"** - As used in this policy, the term 'printed materials' means any publication, document, or record including, but not limited to, the following: newspapers, magazines, pamphlets, books, photographs, drawings, prerecorded magnetic audio tape. The term printed materials does not include either personal letters or advertising mail as defined in Administrative Rule 5120-9-17 (J) Incoming Mail."

{¶15} 75-MAL-02 VI A. requires the use of Withholding Form (DRC4147) in conjunction with OAR 5120-9-19. This form is used to record the rationale for the initial decision to withhold the printed material.

{¶16} However, in the case at bar, defendant used DRC4225 Notice of an Unauthorized Item Received, rather than DRC4147 as required by 75-MAL-02.

{¶17} Defendant relied on a posting issued by Lt. Michael Eiring on February 5, 2015, which in pertinent part stated:

"Subject: Ordering Personal Property

"This is a reminder of the policy that already exist in regard to ordering packages and all other personal property from approved vendors. ODRC Policy 61-PRP-01. Below are a few excerpts from the Policy.

"61-PRP-01 Inmate Personal Property

"Definitions"

"Packages – Any item(s) of personal property received by an inmate from a vendor except as noted in IV(D)(2).

"Page 2"

"All personal property ordered from other than these vendors must be initiated by the inmate and approved by CCI staff"

{¶18} Defendant also asserted the following policy was in effect when plaintiff received the books.

“AR 5120-9-33 States:

“(E) Inmates may possess only personal property items received through an Institutional commissary, and/or vendors identified by the director or designee.

“(1) Inmates may order and receive food packages only from the vendor approved by the director or designee.

“(2) Inmates may order and receive sundry packages (non-food personal property) only from vendors approved by the director or designee.

“(3) Family members, friends and others (regardless of their inclusion on the inmate's approved visitation list) may order food and/or sundry packages, subject to the limitations of this rule, from the approved vendor or vendors, for the benefit of a designated inmate.

“(F) Information on approved vendors, product availability and making purchases will be appropriately provided to inmates, family members and other interested parties.

“The approved vendors for items not purchased directly by you are:

“Union Supply

“Walkenhorst

“Access Securepak-Keefe

“Any other item not purchased by you will be considered unauthorized and not allowed in.

“The material is not being denied due to content, but due to the way the item was received therefore the screening committee will not receive the item

“Lt. W. White”

{¶19} However, as correctly noted by plaintiff neither Union Supply, Walkenhorst, nor Access Securepak-Keefe sell books. Furthermore, the controlling

administrative code and policy for the receipt of books is contained in OAC 5120-9-19 and 75-MAL-02.

{¶20} However, “the provisions of the Ohio Administrative Code take precedence over defendant’s internal policy.” *Parish v. Ohio Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2007-06934-AD, 2008-Ohio-5151, ¶ 14. The court in *Parish*, held that defendant was required to follow the screening procedures as set out by Ohio Administrative Code, even though they were in direct conflict with its internal policy which did not require a screening process when making a determination regarding a nude photograph. This court has also 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.” *Parish* at ¶ 15, citing *Berg v. Belmont Correctional Institution*, 97-09261-AD (1998).

{¶21} OAC 5120-9-19(B)(2) stated in pertinent part: “Printed materials may be received in reasonable quantities, but only, directly from a publisher or distributor.” Nothing contained in OAC 5120-9-19 or 75-MAL-02 requires an inmate to be the purchaser of the printed material involved.

{¶22} The terms publisher or distributor are not defined by statute, the OAC, or ODRC’s policies. In *Youngstown Club v. Porterfield*, 21 Ohio St.2d 83, 255 N.E.2d 262 (1970), this court observed that, in construing statutes, it is customary to give words their plain, ordinary meaning unless the General Assembly has clearly expressed a contrary content. R.C. 1.42 provides that words and phrases are to be read in context and construed according to rules of grammar and common usage. Webster’s II New College Dictionary defines publish as “[t]o issue and prepare (printed material) for public distribution or sale.” Distributor as “[o]ne that distributes...[o]ne that markets or sell merchandise.” The plain language of the words involved mean that Christian book.com and Amazon qualify as distributors. Accordingly, plaintiff, pursuant to OAC, should have

received the books in question, or the books should be sent through the screening process as required by OAC 5120-9-19.

{¶23} The Ohio Administrative Code clearly defines how defendant should dispose excludable printed materials or items deemed minor contraband. Regardless of whether it is deemed excludable printed material or minor contraband, if defendant destroyed plaintiff's property, it should have been done with plaintiff's consent. See Ohio Admin. Code 5120-9-19(M); 5120-9-55 (C)(1)(c). Here, in its investigation report, defendant agrees that it destroyed the two books.

{¶24} Furthermore, plaintiff purchased the book containing the two Sharpie Hi-liters directly from the publisher Love Packages. Accordingly, even pursuant to defendant's policies this book should have been allowed.

{¶25} Plaintiff's claim for five dollars for out-of-pocket expenses pursuing this action is DENIED. *Hamman v. Witherstine*, 20 Ohio Misc. 77, 252 N.E.2d 196 (C.C.P. 1969).

{¶26} 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).

{¶27} 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).

{¶28} Plaintiff is granted judgment in the amount of \$37.15, which represents the loss of the three books in question.

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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 \$37.15. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk