

[Cite as *Newsome v. Dept. of Rehab. & Corr.*, 2017-Ohio-9443.]

DARRICK E. NEWSOME

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00494-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Derrick Newsome, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on March 24, 2016, defendant’s agent Correctional Officer (“CO”) Orozco conducted a strip search and shakedown of plaintiff’s cell. Both plaintiff and his cellmate were ordered out of the cell so the shakedown could be conducted. Plaintiff asserted CO Orozco damaged his property during the shakedown operation.

{¶2} Plaintiff contended the following items and their values were damaged during the shakedown operation: Timberland boots, \$80.00; Lugz boots, \$50.00; Courtline slippers, \$8.95; Nike training shoes, \$69.00; digital 15” television, \$221.95; fan, \$30.00; lamp, \$13.90; alarm clock, \$7.40; Brother ML300 Typewriter, \$400.00; mug, \$2.95; four Miswak sticks, \$10.00; bottle of OPI body scented oil, \$5.00; prayer beads, \$10.00; two Kuwfis, \$25.00 and \$6.95, respectively; El Holy Quran, \$450.00; Sahih Bukhari nine volume set, \$150.00; Prisoner’s Self Help Litigation Manuel, \$50.00; and Prisoner’s Guerilla Handbook, \$50.00. Plaintiff seeks \$1,642.10 in damages for the destruction of his personal property due to the negligence of defendant’s agent. Initially, plaintiff also requested injunctive relief from this court to allow him to purchase replacement religious items from Crescent Imports.

{¶3} On December 12, 2016, a judge of the Court of Claims issued an entry denying plaintiff's claim for injunctive relief and transferred this case to the administrative docket.

{¶4} Defendant submitted an investigation report. While defendant does not deny that plaintiff's property was destroyed, defendant asserted plaintiff failed to prove what property was destroyed. Furthermore, defendant asserted that the search and property destruction conducted by Captain Collier and CO Orozco was beyond the scope of their authority and they were acting on their own. ODRC should not be responsible for their unauthorized actions.

{¶5} Plaintiff filed a response to defendant's investigation report. Plaintiff asserted defendant's investigation report addressed issues plaintiff never raised. Plaintiff is only concerned about the destruction of his personal property which occurred on March 24, 2016.

{¶6} Plaintiff submitted a Theft/Loss Report concerning the March 24, 2016 shakedown incident. The report lists the following property damaged and their values: digital 15" television, \$221.95; fan, \$30.00; lamp, \$13.50; alarm clock, \$7.40; Brother ML300 typewriter, \$400.00; mug, \$2.95; Courtline slippers, \$8.95; Timberland boots, \$80.00; Nike Training shoes, \$69.00; Lugz boots, \$50.00; four Miswak sticks, \$10.00; bottle of OPI body oil, \$5.00; prayer beads, \$10.00; two Kufis one for \$25.00 and the other for \$6.95; Holy Quran and Sahih Bukhari, \$150.00 each; and Prisoner Self Help Litigation Handbook and Prisoner's Guerilla Handbook, \$50.00 each. Based on the Theft/Loss Report the damages sustained totalled \$1,140.70.

{¶7} Under the section on the form stating explain what happened it related: "Newsome's legitimately acquired and possessed property, as listed above, was damaged as cited in 2 pg. ICR dated 3-26-2016 to Mr. Bendrosa, Chief of Security and/or 2nd Shift Capt. – confirmed the Video Camera Surv. 7:20 PM-12:03 AM. Officer J. Orozco took custody and control of the legitimate personal property of Newsome 676-

232, during shakedown; J. Orozco admitted to damaging Newsome's property, as cited above, as a direct result of shakedown. No additional invest. required...Breach of Reasonable Care of bailed property while shakedown was being conducted by J. Orozco." This matter was investigated by Sgt. Giddens.

{¶8} Plaintiff submitted a copy of a listing for a 15" Clear tunes Television for \$221.95. He submitted a copy of a commissary price list which indicated a bottle of prayer oil costs \$4.50, a lamp, \$14.00; a Lacrose Alarm clock, \$9.00; Brother MS-300 typewriter, \$279.99; a mug, \$2.95; slippers, \$13.95; Timberland boots, \$80.00; Lugz boots, \$50.00; Nike Training shoes, \$68.95; Miswak sticks, \$1.75 each; prayer beads, \$10.00; African Leather Kufi, \$24.95; crochet Kufi, \$4.95; nine volume set of Sahih Al Bukhari, \$150.00; Holy Quran, \$30.00; Prisoner's Self-Help Litigation Manuel, \$45.95; Prisoner's Guerilla Handbook, \$35.00; and a fan, \$15.00. Based upon these submissions plaintiff's damages total \$1,068.14. However, it should be noted plaintiff initially listed the destroyed slippers as \$8.95, the replacement slippers were more expensive.

{¶9} Plaintiff also submitted the affidavits of three fellow inmates: James McKibben, Ray Katz, and J. McDade. All attest to the property damage caused by CO Orozco during the shakedown of plaintiff's cell.

CONCLUSIONS OF LAW

{¶10} 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).

{¶11} "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).

{¶12} 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*, 76-0356-AD (1979).

{¶13} 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.

{¶14} 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).

{¶15} 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).

{¶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 (1985). '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 CO Orozco took custody and control over plaintiff's cell.

{¶17} By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Buhrow; Sallows*. If property is damaged while in defendant's possession, it is presumed, without evidence to the contrary, defendant

failed to exercise ordinary care. *Merrick v. Department of Rehabilitation and Correction*, 85-05029-AD (1985); *Cox v. Southern Ohio Training Center*, 84-03740-AD (1986). Furthermore, ODRC acknowledged that plaintiff's property was damaged while under defendant's control.

{¶18} ODRC asserted if any of plaintiff's property was damaged in the shakedown operation it was the responsibility of the CO, not ODRC since the CO was acting outside his scope of employment. To determine if defendant should bear responsibility for an employee's wrongful act, a finding must be made, based on the facts presented, whether or not the injury-causing act was manifestly outside the course and scope of employment. *Elliott v. Dept. of Rehab. & Corr.*, 92 Ohio App.3d 772, 775, 637 N.E.2d 106 (10th Dist. 1994); *Thomas v. Dept. of Rehab. & Corr.*, 48 Ohio App.3d 86, 89, 548 N.E.2d 991 (10th Dist. 1988); *Peppers v. Dept. of Rehab. & Corr.*, 50 Ohio App.3d 87, 90, 553 N.E.2d 1093 (10th Dist. 1988). It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment. *James H. v. Dept. of Mental Health & Mental Retardation*, 1 Ohio App.3d 60, 439 N.E.2d 437 (10th Dist. 1980). The act must be so divergent that it severs the employer-employee relationship. *Elliott*, at 775, citing *Thomas*, at 89, *Peppers*, at 90. In the case at bar, this court cannot find CO Orozco's actions were so divergent as to sever the employer-employee relationship. Accordingly, defendant is responsible for the negligent actions of CO Orozco.

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

{¶20} 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).

{¶21} 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).

{¶22} 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).

{¶23} Judgment is rendered in favor of plaintiff in the amount of \$1,063.14.

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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 \$1,063.14. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 4/14/17
Sent to S.C. Reporter 5/15/18