

[Cite as *Bell v. Dept. of Rehab. & Corr.*, 2017-Ohio-9444.]

CHRISTOPHER BELL

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00278-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Christopher Bell, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted on December 19, 2013, he was transferred to defendant’s Richland Correctional Institution (“RICI”), at that time he possessed a hot pot, a pair of gray shorts, and a converter box. Plaintiff asserted he was not allowed to receive this property due to the actions of Correctional Officer (“CO”) Young. Plaintiff contended later this property was destroyed. Plaintiff stated he filed grievances as the result of these actions and stated ODRC determined that plaintiff should be compensated for these losses.

{¶2} Plaintiff asserted on February 5, 2014, he purchased an ACA Adaptor from the commissary. Plaintiff presented a copy of a commissary receipt from RICI which evidences the purchase of the adaptor for \$10.80. Plaintiff stated CO Young held the adaptor for over three months and when he received it on May 7th it had been altered. However, the next day, May 8th, plaintiff alleged that CO Young and three other staff members filed false conduct reports against him which resulted in him being placed in segregation. “While in segregation a person of official capacity poured some form of soluble [sic] liquid all over Plaintiff’s typewriter, Sony CD Player and Headphones.”

{¶3} On May 12, 2014, plaintiff related he was confronted by inmate Rodney Pullman who accused him of being a snitch. Plaintiff asserted this false rumor was spread by RIC's staff. At that time, he was handcuffed by RIC staff who allowed Pullman to assault him. Plaintiff stated staff framed him for fighting and planted a "phantom weapon" in plaintiff's living area. A hearing was conducted before the Rules Infraction Board ("RIB") and he was found guilty of all charges.

{¶4} On June 24, 2014, plaintiff related he participated in a 2.4 pack-up in anticipation of a scheduled transfer. Plaintiff contended he was forced to leave his property with CO Young. On June 25, 2014, at 6:00 am he was transported via bus to defendant's Toledo Correctional Institution ("TOCI"). Upon his arrival he was placed in segregation at the bequest of CO Young.

{¶5} Plaintiff related he never received his 2.4 personal property nor his medical file. As the result of not receiving the medical file, staff at TOCI was unaware that plaintiff needed his hypertension pills and inhaler. Due to not receiving the proper medical treatment plaintiff fell down the stairs and was placed on the top bunk when it was incompatible with his medical conditions.

{¶6} Plaintiff contended once he was released from segregation, he attempted to follow the grievance procedure to receive his missing property, however, to no avail.

{¶7} On or about October 9, 2014, a box arrived with some of plaintiff's missing property. However, plaintiff asserted his television and typewriter were broken and his family photographs were missing.

{¶8} Plaintiff related that since he never received the 2.4 personal property for almost 120 days, accordingly, he was forced to purchase replacement items: a beard trimmer, 25 envelopes, two ink pens, Ibuprofen, laundry detergent, shower sandals, hair conditioner, cotton swabs, soap dish, bowl, comb, petroleum jelly, bar soap, shoe laces and doo rag on July 15, 2014. Ten manila legal envelopes, toe and fingernail clippers, prayer oil and tooth brush on July 22, 2014. On July 30, 2014, he purchased band aids,

four pack of batteries, and a toothbrush holder. On August 5, 2014, he purchased underwear, new channel-splitter and headphone extension cord. He purchased new insoles on August 19, 2014, and a 5-way power adaptor on August 26, 2014. On August 18, 2014, an antenna system, and on August 22nd a Clear Tunes television, typewriter and Reebok tennis shoes, were purchased to replace the missing items.

{¶9} Plaintiff seeks damages for the above mentioned lost property in the amount of \$2,500.00. Plaintiff paid the \$25.00 filing fee.

{¶10} Plaintiff submitted a copy of the Inmate Property Record dated June 24, 2014, the date of his transfer from RIC. The record was signed by plaintiff on June 24, 2014, and lists the following items of personal property: Magnavox television, Koss headphones, Brother Typewriter, earbuds, Reebok tennis shoes, gym shorts, sunglasses, 325 photographs, beard trimmer, reasonable amount of ink pens, seven pairs of undershorts, shower shoes, hair conditioner, cotton swabs, soap dish, bowl, three combs, six bars of soap, lotion, 19 envelopes, two nail clippers, doo rag, two headphone extension cords, surge protector, and adapter. Plaintiff signed the following statement: " I certify that the above listed items are a complete and accurate inventory of all my personal property." The Record did not include the following property items: typewriter print wheel, correction tape, laundry detergent, toothbrush holder, petroleum jelly, shoe laces, prayer oil, hydrocortisone cream, band aids, four pack of batteries, and a digital antenna.

{¶11} Plaintiff submitted an affidavit from a fellow inmate, Lance Pough, who averred upon his arrival at TOCI he was informed by defendant's agent, Ms. Losie, that TOCI did not like inmates who were "legal beagles" and they considered them trouble-makers. Ms. Losie told Pough that Bell was considered a troublemaker so upon his arrival he was sent to segregation.

{¶12} Plaintiff submitted an Inmate Property Record dated October 10, 2014. This record lists Koss headphones, Magnavox television (It was noted television was

placed in long term storage), sunglasses, reasonable amount of pens, Brother typewriter, doo rag, petroleum jelly, earbuds, power strip, beard trimmer, nail clippers, and a bar of soap. Although plaintiff signed the form he did note that there were “items missing.” It should be noted plaintiff purchased two pens, doo rag, petroleum jelly, beard trimmer, and bar soap on July 15, 2014, and two pairs of nail clippers on July 22, 2014, to replace the missing items.

{¶13} Plaintiff submitted an informal complaint dated November 1, 2014. Plaintiff acknowledged that some of the property he had at RIC now arrived at TOCI. However, he stated the following property items were either damaged or missing. Typewriter damaged and the following items missing: pair of Reebok tennis shoes, pair of boots, 325 photographs, plus one photo album, 6-way surge protector, three hooded sweatshirts, conditioner, deodorant, sunglasses, Nike mesh shorts, FCA mesh shorts, bowl, jersey, oil scenter, and cough drops.

{¶14} Plaintiff submitted receipts from vendors revealing he purchased replacement items for those lost in the inter-institutional transfer. RCA digital flat antenna, August 18, 2014, no value listed; Clear Tunes TV and Koss earbuds, August 22, 2014, \$214.95 and \$19.95 respectively; Nike Overplay Tennis shoes, January 13, 2016, \$75.00; typewriter ribbons and correction tape, February 2, 2015, no cost listed;

{¶15} Plaintiff submitted an affidavit by fellow inmate Duane Gibson who noted plaintiff’s medical problems associated with environmental tobacco smoke.

{¶16} Finally, plaintiff submitted copies of the following certificates of titles: hot pot, power strip, Brother Typewriter, Optimus headphones, Koss earbuds, converter box, equalizer, Sony AM/FM CD Walkman, calculator, Magnavox television, beard trimmer, alarm clock, television remote, 8” fan, video game, and 5-way plug.

{¶17} This court issued an entry on November 8, 2016, granting defendant’s motion to dismiss with respect to the December 13, 2013, missing property i.e., hot pot,

gray shorts, and converter box. The remainder of defendant's motion to dismiss was denied.

{¶18} On January 19, 2017, this court issued an entry denying plaintiff's motion for reconsideration and motions for default judgment.

{¶19} Defendant submitted an investigation report. Initially, defendant asserted with respect to the fight plaintiff engaged with another inmate, plaintiff was found guilty of fighting by the RIB. The law is well-settled that this court does not have jurisdiction to hear appeals from decisions rendered by the RIB. Accordingly, this claim should be dismissed.

{¶20} Next, defendant asserted plaintiff's medical records were transferred with him. Defendant provided information that a medical chart review was conducted on the day plaintiff arrived at TOCI and plaintiff had a bottom bunk restriction.

{¶21} Defendant contested the fact that plaintiff owned a typewriter. Defendant's investigation revealed plaintiff possessed a typewriter in 2010, but it was determined the typewriter was stolen and the typewriter was subsequently confiscated. Defendant asserted plaintiff has failed to prove he legally owned a typewriter at the time he was moved from RIC1 to TOCI. ODRC also asserted that plaintiff failed to prove he owned a television at the time of the move, he had to mail out his television in 2010 since it was altered. Defendant's records reveal plaintiff did not purchase a television until 2014 after his transfer.

{¶22} Finally, defendant contended plaintiff failed to prove he owned the remainder of the property he claimed was lost. Accordingly, defendant argued plaintiff's claim should be denied.

{¶23} Defendant submitted a conduct report dated May 23, 2014, wherein it described the fight inmate Pullen and plaintiff participated in. Unlike plaintiff's characterization of the incident he was not handcuffed when attacked by inmate Pullen.

ODRC also submitted a copy of the Disposition of the RIB which determined plaintiff was guilty of a rule 19 violation, instigate or perpetuating fighting.

{¶24} Plaintiff submitted a response to defendant's investigation report. Initially, plaintiff asserted he was lawfully in possession of a television set. Plaintiff asserted he submitted a certificate of title for the set when he was housed at defendant's Lorain Correctional Institution and upon his transfer to RICl he still possessed the set. (Plaintiff submitted a certificate of title for a Magnavox television dated June 4, 2012, an Inmate Property Record dated December 19, 2013, which indicates the possession of the television, and an Inmate Property Record dated June 24, 2014, prior to his transfer to TOCI which lists a television in his possession). Plaintiff also noted a typewriter is listed on both the above mentioned Inmate Property Records.

{¶25} Next, plaintiff disputed ODRC's allegation that his medical file was not lost. Plaintiff submitted a portion of a DRC4428, which in pertinent part states:

"My investigation of your Appeal included review of the above information. I also reviewed the FMC MOSS database that provides the details of dates for any scheduled medical trips to FMC and OSU hospitals. It also provides the results of lab work or testing ordered by physicians and schedule for chronic care clinic appointments. In addition, I reviewed your electronic health records, and review copies of your medical file provided by the HCA at your facility and commissary records. I reviewed appeal #RICl-06-14-000129. The ICR dealt with bottom bunk restriction and so did the appeal that I reviewed as noted above. It has been handed. I will address that issue of your file missing. Records regarding medications, x-rays, consultations, etc. are in the 'patient one' database in the computer and thus were addressed. The file is being searched for, but your current complaints are being addressed included CCC concerns. Advanced Level Provider examinations and hernia."

{¶26} Finally, plaintiff asserted a bailment was created when defendant's personnel gained control of his property when he was transferred between RICl and

TOCI. It was during this transfer plaintiff's personal property was lost and plaintiff contended he should be reimbursed for this lost property.

CONCLUSIONS OF LAW

{¶27} 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).

{¶28} "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).

{¶29} 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).

{¶30} 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.

{¶31} 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).

{¶32} 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).

{¶33} “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*, (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 agents packed plaintiff’s property for transfer from RIC1 to TOCI.

{¶34} By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Buhrow; Sallows*. If property is lost or stolen 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). A comparison of the Inmate Property Records of June 24, 2014, and October 10, 2014, reveal the following property items and their values were lost while under defendant’s agents control: beard trimmer, \$22.71; sunglasses, \$6.00; 325 photographs, \$650.00; (See *Small v. Department of Rehabilitation and Correction*, 2013-00714-AD (2014); two pairs of undershorts, \$3.69; shower shoes, \$3.15; conditioner, \$1.67; cotton swabs, \$.59; soap dish, \$.49; bowl, \$2.13; two bars of soap, \$1.78; shoe laces, \$.61; body lotion, \$1.60; 19 envelopes, \$10.83; two nail clippers, \$.60; prayer oil, \$4.92; doo rag, \$2.37; two pens, \$.24; and a 5-way power adapter plug, \$19.14. This missing property totals \$732.52.

{¶35} With respect to plaintiff’s television and typewriter defendant asserted he did not legally own them after 2010, however, plaintiff presented certificates of titles for a Magnavox television dated June 4, 2012, and Brother Typewriter dated the same

date. Evidence has shown that plaintiff's television was two years old at the time it was lost. Plaintiff asserted the set was worth \$150.00 when it was purchased. Based on the fact the television constituted depreciable property, the court finds plaintiff has suffered damages in the amount of \$75.00. The same is true for the typewriter, also depreciable property, so plaintiff is granted \$100.00 for the damage sustained to his typewriter.

{¶36} Black's Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

{¶37} Black's Law Dictionary Sixth Edition (1990) defines burden of proof as: "the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court."

{¶38} Plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St.82, 118 N.E.2d 147 (1954).

{¶39} Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's agents took control or gain possession over any other personal property item of plaintiff.

{¶40} Plaintiff presented no evidence other than his own statement to prove he sustained injury as the result of not timely receiving his medications. Accordingly, plaintiff failed to meet his burden of proof with respect to his issue.

{¶41} The Court of Claims does not have jurisdiction over decisions of the Rule Infraction Board. *Chatman v. Dept. of Rehabilitation and Correction*, 8406323-

AD (1985); *Ryan v. Chillicothe Institution*, 81-05181-AD; *Rierson v. Department of Rehabilitation*, 80-00860-AD (1981).

{¶42} An inmate's appeal of a Rules Infraction Board decision does not relate to civil law, a proper subject for adjudication pursuant to Chapter 2743 of the Ohio Revised Code. Instead, the appeal relates to private rights and remedies involving criminal proceedings and penalties imposed by a disciplinary board. Therefore, it falls outside the Court's exclusive jurisdiction. *Maynard v. Jago*, 76-0581-AD (1977). Accordingly, this court has no jurisdiction to question the underlying factual determination of the RIB.

{¶43} Negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction*, 2000-10634-AD (2001); *Tommy Lee Shafer v. Ohio Dept. of Rehab. & Corr.*, 2013-00418-AD (2014).

{¶44} 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).

{¶45} 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).

{¶46} 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).

{¶47} Plaintiff is granted judgment in the amount of \$907.52, plus \$25.00 which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio*

Department of Rehabilitation and Correction, 62 Ohio Misc.2d 19, 587 N.E.2d 990 (Ct. of Cl. 1990).

CHRISTOPHER BELL

Plaintiff

v.

OHIO DEPARTMENT OF
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Defendant

Case No. 2016-00278-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 \$932.52, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk