

[Cite as *Dixon v. Dept. of Rehab. & Corr.*, 2019-Ohio-1914.]

WILLIAM DIXON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-01443AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, William Dixon, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related while he was housed at defendant’s Marion Correctional Institution (“MCI”), “Lt. Thomas Todd friend ‘stole’ or lost a photo album with about 100 photos enclosed.” Plaintiff stated at that time he was transferred to defendant’s Mansfield Correctional Institution (“MANCI”), where a theft/loss was filed as the result of the loss of one hundred photos. Plaintiff asserted after this matter was investigated by defendant’s agents, they lied and stated only 14 photos were missing.

{¶2} Plaintiff related he filed Claim No. 2018-00034AD concerning his lost property. Again, plaintiff asserted defendant’s agents lied and stated that after review, the photos would be returned to plaintiff. However, this never occurred.

{¶3} Second, plaintiff asserted the boots which were confiscated and considered altered, were in fact not altered. However, due to a foot condition he experienced, medical staff put special insoles in the boots. Accordingly, plaintiff argues the boots were wrongfully confiscated.

{¶4} Plaintiff sought damages in the amount of \$540.00, \$5.00 each for the 100 photos and \$40.00 for the depreciated value of his boots. Plaintiff was not required to submit the \$25.00 filing fee.

{¶5} Plaintiff submitted a Motion of Evidence, which included additional evidence concerning his claim. Plaintiff’s Motion is GRANTED.

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{¶6} Defendant filed a Motion for Partial Summary Judgment and Investigation Report. Defendant asserted partial summary judgment should be granted thus the photographs and boots in question were the subject matter of another claim filed by plaintiff which was litigated to final judgment. Accordingly, the doctrine of res judicata should apply.

{¶7} ODRC noted in Claim No. 2018-00034-AD, this court determined the number of photos involved was 14 not 100, as claimed by plaintiff. Furthermore, the court determined that plaintiff's boots had been altered and constituted contraband. While plaintiff was granted judgment in the amount of \$295.50, for other items lost, but nothing for the photos or boots in question. It should be noted that plaintiff did not appeal Claim No. 2018-00034-AD to a judge of the Court of Claims. Defendant acknowledged that it lost the 14 photos and accepts responsibility for their loss, but with respect to the remainder of the photos and boots, res judicata should apply.

{¶8} Plaintiff filed a response to defendant's Motion for Partial Summary Judgment and investigation report. Initially, plaintiff again asserted 100 photos were taken not 14 as was determined in Claim No. 2018-00034-AD. Plaintiff again states the whole process of confiscating his photos alleging gang signs or activities was a scam to take his 100 photos. Plaintiff asserted at the time he was trying to report of "murder," but he was locked up as a gang threat without proof so that defendant's personnel could steal his property. Plaintiff requests judgment be granted in the full amount requested. Plaintiff does not address the boot issue in his response.

CONCLUSIONS OF LAW

{¶9} Initially, defendant argues partial summary judgment should be granted with respect to the number of photographs involved and the boots in question.

{¶10} Civ.R. 56(C) states, in part, as follows:

"Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence,

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and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 321 N.E.2d 564, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 364 N.E.2d 267 (1977). And in *Dresher v. Burt*, 75 Ohio St.3d 280, 298, 662 N.E.2d 264 (1996), a plurality opinion, the Ohio Supreme Court stated that "there is no *requirement* in Civ.R. 56 that *any* party submit affidavits to support a motion for summary judgment. See, e.g., Civ.R. 56(A) and (B). There *is* a requirement, however, that a moving party, in support of a summary judgment motion, specifically point to something in the record that comports with the evidentiary materials set for in Civ.R. 56(C)."

{¶11} Both the case at bar and Claim No. 2018-00034-AD concern the same incident and the same property loss.

{¶12} "'Res judicata operates to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction.' *State ex rel. Kroger Co. v. Indus. Comm.* (1998), 80 Ohio St.3d 649, 651." The doctrine of res judicata provides that '[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claims arising out of the transaction or occurrence that was the subject matter of the previous action.' *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995 Ohio 331, 653 N.E.2d 226, syllabus. A party asserting res judicata must establish the following elements: "(1) there was a

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prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence.” *Reasoner v. City of Columbus*, 10th Dist. No. 04AP-800, 2005-Ohio-468 ¶ 5.”

{¶13} ODRC stated that both Claim No. 2018-00034-AD and the case at bar concern the same property loss of photographs and boots.

{¶14} Second, the parties are identical in both actions William Dixon is plaintiff in both claims while ODRC is defendant.

{¶15} Third, both actions involve the confiscation of plaintiff’s photographs and boots. Both complaints concern the same transaction.

{¶16} Finally, the confiscation of plaintiff’s property was raised in both actions. In Case No. 2018-00034-AD, this court determined plaintiff’s boots were contraband and he suffered the loss of 14 photographs. Plaintiff did not appeal 2018-00034-AD to a judge of the Court of Claims.

{¶17} Both the case at bar and Claim No. 2018-00034-AD concern the same incident and the same property loss.

{¶18} “A final judgment on the merits rendered by a court of competent jurisdiction constitutes an absolute bar to a subsequent action involving the same claim or cause of action between the same parties or privies, even if the actions differ in form. *Hites v. Irvine’s Admr.*, (1862), 13 Ohio St. 283, 286-288. Where the subject matter and causes of action are identical, a former judgment is conclusive between the parties not only to matters actually determined but also as to any other matters of fact or law which could have been determined by the court. *Covington v. Cincinnati Bridge Co. v. Sargent*, (1875), 27 Ohio St. 233, 237. The primary basis of res judicata is identity of causes of action. If there is identity of facts and evidence necessary to sustain each claim, the judgment of the former is bar to judgment of the later.” *Norwood v.*

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McDonald, 142 Ohio St. 299, 305, 52 N.E.2d 67 (1943).

{¶19} Under the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava*. Res judicata operates to bar litigation of “all claims which were or might have been litigated in a first lawsuit.” (Emphasis omitted.) *Grava* at 329, quoting *Natl. Amusements, Inc. v. City of Springdale*, 53 Ohio St.3d 60, 62, 558 N.E.2d 1178 (1990).

{¶20} Plaintiff is barred from relitigating the same incident.

{¶21} In his response, plaintiff asserted ODRC’s staff stole 86 of his photographs. However, he has not supported this allegation with anything other than his own statements.

{¶22} However, assuming arguendo, that plaintiff is correct, it must be determined if defendant should bear responsibility for an employee’s wrongful act, a finding must be made, based on the facts presented, whether 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.

{¶23} Malicious purpose encompasses exercising “malice,” which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. *Jackson*

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v. Butler Cty. Bd. of Cty. Commrs., 76 Ohio App.3d 448, 453-54, 602 N.E.2d 363 (12th Dist. 1991), citing *Teramano v. Teramano*, 6 Ohio St.2d 117, 118, 216 N.E.2d 375 (1966); and *Bush v. Kelley's Inc.*, 18 Ohio St.2d 89, 247 N.E.2d 745 (1969).

{¶24} The Supreme Court of Ohio established that an employer is liable for the tortious conduct of its employee only if the conduct is committed within the scope of employment and, if the tort is intentional, the conduct giving rise to the tort must facilitate or promote the business of which the employee was engaged. *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584 (1991), citing *Little Miami R.R. Co. v. Wetmore*, 19 Ohio St. 110 (1869), and *Taylor v. Doctors Hosp.*, 21 Ohio App.3d 154, 486 N.E.2d 1249 (10th Dist. 1985).

{¶25} Further, an intentional and willful tort committed by an employee for their own purposes constitutes a departure from the employment, so that the employer is not responsible. *Szydlowski v. Dept. of Rehab. & Corr.*, 79 Ohio App.3d 303, 607 N.E.2d 103 (10th Dist. 1992), citing *Vrabel v. Aciri*, 156 Ohio St. 467, 103 N.E.2d 564 (1952). The facts of this case, taken as plaintiff asserted, would constitute an intentional tort committed by defendant's employee performed for their own personal purposes. Following this rationale, plaintiff cannot maintain a cause of action against defendant for the intentional, malicious act of its employee. Therefore, plaintiff's claim must be denied and judgment is rendered in favor of defendant.

{¶26} However, defendant admitted it lost the 14 photographs of plaintiff's in their possession. 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).

{¶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} As trier of fact, this court has the power to award reasonable damages

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based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶29} 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). This court in the past has determined that \$1.00 per photograph is a reasonable amount of damages. *Owens v. Ohio Department of Rehabilitation and Correction*, 2011-04665-AD aff'd jud (2011); *Small v. Department of Rehabilitation and Correction*, 2013-00714-AD (2014).

{¶30} Defendant is liable to plaintiff for property loss in the amount of \$14.00, the fair market value of the photographs.

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Defendant

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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 \$14.00. Court costs are assessed against defendant.

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DANIEL R. BORCHERT
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