

IN THE COURT OF CLAIMS OF OHIO

ROOSEVELT L. ELLIOTT, #319-739 :
1580 State Route 56 N.E. :
P.O. Box 69 :
London, Ohio 43140-0069 : Case No. 2002-02558-AD
:
Plaintiff : MEMORANDUM DECISION
:
v. :
:
LONDON CORRECTIONAL :
INSTITUTION :
:
Defendant :

: : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On February 22, 2002, plaintiff, Roosevelt L. Elliott, filed a complaint against defendant, London Correctional Institution, alleging his gym shoes were lost or stolen while under defendant's control. Plaintiff seeks damages in the amount of \$57.25 for a replacement pair of shoes, \$50.75 for a second replacement pair of shoes, \$25.00 for filing fee reimbursement, and \$4.82 for copies and postage. Plaintiff submitted the filing fee with his complaint;

{¶3} 2) On April 10, 2002, defendant filed an investigation report admitting liability and acknowledging plaintiff suffered damages in the amount of \$57.25, the replacement cost for one pair of shoes;

{¶4} 3) Plaintiff filed a response. Plaintiff did not present any evidence to establish his right to recover the value of two pairs of shoes;

{¶5} 4) On May 6, 2002, defendant filed a response to plaintiff's response. Defendant asserts plaintiff should not be entitled to damages for two pairs of shoes.

{¶6} THE COURT CONCLUDES THAT:

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

{¶8} 2) 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* (1977), 76-0368-AD;

{¶9} 3) Negligence has been shown in respect to the loss of plaintiff's pair of shoes. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD;

{¶10} 4) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42;

{¶11} 5) Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only 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* (1995), 102 Ohio App. 3d 782; 6)

{¶12} 6) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239;

{¶13} 7) Plaintiff is not entitled to expenses, i.e. copying

and postage costs, related to the prosecution of his case. *Hamman v. Witherstrine* (1969), 20 Ohio Misc. 77, 252 N.E. 2d 196;

{¶14} 8) Defendant is liable to plaintiff in the amount of \$57.25, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶15} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶18} 2) Defendant (London Correctional Institution) pay plaintiff (Roosevelt L. Elliott) \$82.25 and such interest as is allowed by law;

{¶19} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

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