

IN THE COURT OF CLAIMS OF OHIO

NORENE WALKER, #38724 :
2675 East 30th Street :
Cleveland, Ohio 44115 : Case No. 2002-02931-AD

Plaintiff : MEMORANDUM DECISION

v. :

NORTHEAST PRE-RELEASE CENTER :

Defendant :

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

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

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FINDINGS OF FACT

{¶1} 1) On September 10, 2001, employees of defendant, Northeast Pre-Release Center, confiscated some bottles from the possession of plaintiff, Norene Walker, an inmate.

{¶2} 2) Plaintiff asserted eleven or twelve bottles containing perfume oil were confiscated from her possession. Plaintiff indicated she had purchased the bottles of perfume oils from Chaplain Brown and the commissary.

{¶3} 3) The confiscated bottles were lost, stolen, or discarded while under the control of defendant's personnel. Consequently, plaintiff filed this complaint seeking recovery for the loss of the bottles of perfume oil. Plaintiff did not make a specific damage amount claim. Evidence was submitted showing

plaintiff purchased four bottles of perfume oil in February and March 2001. The bottles of oil were valued at \$23.70. Plaintiff submitted the filing fee with the complaint.

{¶4} 4) Defendant acknowledged its personnel confiscated bottles from plaintiff's possession which were subsequently lost or discarded. However, defendant denied any liability in this matter. Defendant suggested the bottles confiscated from plaintiff could have been empty. Defendant indicated the oil plaintiff purchased in February and March 2001 would have been completely exhausted if used properly. Defendant contended plaintiff has failed to prove how much oil she owned and how many bottles were confiscated.

{¶5} 5) Plaintiff did not respond. The trier of fact finds some bottles containing some perfume oil were confiscated on September 10, 2001 by defendant's personnel. The confiscated property which carried some value, was subsequently lost while under defendant's care.

CONCLUSIONS OF LAW

{¶6} "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.

{¶7} 2) 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* (1979), 76-0356-AD.

{¶8} 3) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶9} 4) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm.

Parks v. Department of Rehabilitation and Correction (1985), 85-01546-AD.

{¶10} 5) In respect to the loss of certain property items claimed plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶11} 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.

{¶12} 7) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. 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.

{¶13} 8) The court finds defendant liable to plaintiff in the amount of \$10.00, 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.

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

{¶15} IT IS ORDERED THAT:

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

{¶17} 2) Defendant (Northeast Pre-Release Center) pay plaintiff (Norene Walker) \$35.00 and such interest as is allowed by law;

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

DANIEL R. BORCHERT

RDK/laa
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Deputy Clerk