

IN THE COURT OF CLAIMS OF OHIO

MARIO JAY HUNTER, #290-217 :
 2001 East Central Avenue :
 Toledo, Ohio 43608 : Case No. 2002-04364-AD

Plaintiff : MEMORANDUM DECISION

v. :

TOLEDO CORRECTIONAL :
 INSTITUTION :

Defendant :

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

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

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

FINDINGS OF FACT

{¶1} 1) On or about November 5, 2001, plaintiff, Mario Jay Hunter, an inmate incarcerated at defendant, Toledo Correctional Institution, ordered an electric typewriter from an approved catalogue. Plaintiff stated he had previously obtained permission to order and receive the typewriter. Funds were withdrawn from plaintiff's account to pay the entire purchase price of the typewriter.

{¶2} 2) On November 29, 2001, plaintiff received his new typewriter. Plaintiff indicated he already owned a manual typewriter when he ordered the new electric typewriter. Since he was not permitted by institutional rules to retain two typewriters, plaintiff had to choose between either mailing his manual

typewriter out of the institution to a designated addressee or authorizing the destruction of the device. Plaintiff opted to have the manual typewriter destroyed. Plaintiff explained he had the typewriter destroyed because he did not maintain a home address outside defendant's facility.

{¶3} 3) Plaintiff asserted he obtained approval on or about December 4, 2001 to order and purchase accessories for his new electric typewriter. Plaintiff stated he ordered 3 print wheels, 3 cassette ribbons, 2 correction tapes, and 500 sheets of special grade typing paper. Also, on December 4, 2001, plaintiff discovered his new typewriter would not function properly. Consequently, he sent the typewriter out of defendant's institution for repairs. The repaired typewriter was shipped back to plaintiff on January 29, 2002.

{¶4} 4) On March 5, 2002, defendant's personnel confiscated plaintiff's electric typewriter after discovering the device carried more than one line of memory. The memory function of plaintiff's typewriter rendered the electrical appliance impermissible property under defendant's internal regulations.

{¶5} 5) Plaintiff subsequently filed this complaint seeking to recover \$123.49, the entire cost of the confiscated typewriter, plus \$117.76, the total cost of typewriter accessories purchased in December, 2001, also \$75.43, the total repair cost of the electric typewriter, plus \$88.79, the estimated value of the manual typewriter which was voluntarily ordered destroyed, and \$25.00 for filing fees. Total damages claimed are \$430.47.

{¶6} 6) Defendant stated the vendor catalogue displaying the electric typewriter plaintiff purchased, "misrepresented the memory capacity" for the electric appliance. Therefore, defendant's staff approved plaintiff's purchase based on this misrepresentation. Plaintiff spent \$123.49 for this typewriter characterized as a Smith Corona Word Smith 200. Defendant related plaintiff, on December 1, 2001, paid \$50.00 to have the typewriter repaired.

Defendant asserted Smith Corona reimbursed plaintiff \$169.00, an amount representing the purchase price of the electric typewriter, plus the \$50.00 repair cost bill plaintiff paid. Plaintiff was not reimbursed the \$4.00 cost for shipping and handling the typewriter.

Defendant denied liability for the cost of the electric typewriter repairs.

{¶7} 7) Defendant disputed the \$67.00 repair bill submitted by plaintiff. This bill related to the cost of repairs for a Smith Corona Word Smith 250, not a Smith Corona Word Smith 200. The repair bill was paid by a person identified as Allene Campbell, not plaintiff. Defendant contended this \$67.00 bill is unrelated to repairs claimed by plaintiff in the complaint. Defendant denied plaintiff incurred the cost of repairs represented by the \$67.00 bill.

{¶8} 8) Defendant agreed plaintiff spent \$117.76 for accessories (ribbon cassettes, correction tapes, point wheels, and 500 sheets of typing paper). Defendant admitted liability for the cost of the correction tapes, print wheels, and cassettes. Defendant also admitted liability for \$12.43 in unrefunded shipping and handling expenses. Defendant admitted liability for the filing fee. Defendant denied liability for the typing paper. Defendant argued this ream of paper is still usable, does not portray an actual loss, and remains in plaintiff's possession. Total damage admitted amounts to \$125.19.

{¶9} 9) Defendant denied liability for the loss of plaintiff's manual typewriter. Plaintiff voluntarily chose to authorize the destruction of this device instead of mailing the property from defendant's institution.

{¶10} 10) Plaintiff filed a response. Plaintiff contended he should be entitled to receive an additional \$4.00 for unreimbursed shipping charges for the electric typewriter. Furthermore, plaintiff reasoned he should be awarded damages for the cost of typing paper because he wanted to use the typing paper with the

confiscated electric typewriter. Plaintiff maintained he should be compensated for the loss of his destroyed manual typewriter, although plaintiff did not link the loss of this typewriter to any negligent act or omission on the part of defendant. Finally, plaintiff insisted he should be awarded the \$67.00 repair costs paid by his relative, Allene Campbell. Plaintiff submitted documentation establishing this repair cost was not reimbursed by Smith Corona. Plaintiff argued he should receive the \$67.00 as damages since this amount represents repair expenses paid on his behalf.

CONCLUSIONS OF LAW

{¶11} 1) Plaintiff's claim for his manual typewriter is denied. By authorizing the destruction of his typewriter and failing to take any subsequent positive action to negate this authorization, plaintiff, in effect, relinquished any property right he maintained in the device. See *Johnson v. Southern Ohio Correctional Fac.* (2000), 2000-07846-AD jud. Plaintiff has no right to assert a claim for property in which he cannot prove he maintained an ownership right. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

{¶12} 2) Plaintiff's claim for the cost of the electric typewriter is denied. An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Furthermore, R.C. 2743.02(D) states, in pertinent part: "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant." Evidence has shown plaintiff received collateral recovery from Smith Corona for the purchase price of his typewriter. Therefore, recovery is limited by R.C. 2473.02(D).

{¶13} 3) Plaintiff has failed to prove he suffered any loss in regard to the 500 sheets of typing paper. Plaintiff's claim for

the cost of the typing paper is denied.

{¶14} 4) Liability has been established in respect to the loss of print wheels, correction tapes, cassette ribbons, shipping and handling costs, and the unreimbursed repair bill.

{¶15} 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 as which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782.

{¶16} 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.

{¶17} 7) A plaintiff is competent to testify with respect to the true value of his property. *Gaiter v. Lima Correctional Facility* (1988), 61 Ohio Misc. 2d 292.

{¶18} 8) Defendant is liable to plaintiff in the amount of \$171.19, 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.

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

{¶20} IT IS ORDERED THAT:

{¶21} 1) Plaintiff's claim is GRANTED in part and DENIED in part;

{¶22} 2) Defendant (Toledo Correctional Institution) pay plaintiff (Mario Jay Hunter) \$196.19 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
10/1
Filed 10/17/02
Jr. Vol. 722, Pg. 57
Sent to S.C. reporter 10/29/02