

[Cite as *Oyer v. Dept. of Rehab. & Corr.*, 2002-Ohio-7231.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES E. OYER, #277-290 :
P.O. Box 5500 :
15802 St. Rt. 104 N. : Case No. 2002-04020-AD
Chillicothe, Ohio 45601-0990 :

Plaintiff : MEMORANDUM DECISION

v. :

DEPARTMENT OF REHABILITATION :
AND CORRECTION :

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} Plaintiff, Charles E. Oyer, an inmate, has alleged that at various unspecified times in multiple institutions under the control of defendant, Department of Rehabilitation and Correction, his personal property was lost or stolen while in the custody of defendant's personnel.

{¶2} Specifically, plaintiff indicated his 3 t-shirts, 4 pairs of undershorts, 10 pairs of socks, 2 pocket t-shirts, a pair of gym shorts, 4 handkerchiefs, a pair of slippers, a towel, a wash cloth, 4 markers, a roll of tape, 20 envelopes, writing paper, 6 manilla envelopes and cookies were not packed and were stolen from plaintiff's cell on or about March 11, 2002. Plaintiff claimed

\$118.00 in damages for this loss of property.

{¶3} Additionally, plaintiff asserted 4 tubes of toothpaste with a value of \$4.00 were stolen from his possession on January 28, 2002. Also, plaintiff claimed the loss of a cap, a can of tobacco, 2 bags of coffee, envelopes and a cup. Total value of these items was listed at \$24.60.

{¶4} Furthermore, plaintiff claimed on December 14, 2001, his identification badge valued at \$5.00 was taken by an employee of defendant.

{¶5} Also, plaintiff alleged his mirror and commissary items were stolen at sometime in December, 2001. Plaintiff claimed \$10.00 in damages for this alleged loss.

{¶6} Plaintiff further alleged his markers, tape, envelopes were confiscated during September, 2001. Damages claimed amount to \$17.60.

{¶7} Plaintiff alleged his watch band was damaged by someone in June, 2001. Plaintiff also made an unspecified allegation concerning commissary items. Plaintiff asserted he sustained damages of \$20.00.

{¶8} Plaintiff alleged someone took his markers, tape, envelopes, sweat shirt and coffee on January 17, 2001. Plaintiff claimed damages of \$33.60 for this alleged loss.

{¶9} Plaintiff asserted his property was confiscated on April 20, 2000 and not returned. The alleged confiscated items included 5 tubes of toothpaste, shampoo, dental floss, envelopes, markers, soap, tape, a cap, socks, undershorts, a clock (damaged), glass, t-shirts (destroyed) and commissary items. Plaintiff claimed damages of \$102.25 for these alleged losses.

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{¶10} Plaintiff alleged something happened to his deodorant, toothbrush, toothpaste, envelopes and commissary items in September, 1998. Plaintiff claimed damages in the amount of \$49.00.

{¶11} Plaintiff claimed some of his property was stolen at sometime in January, 1998. Damages requested equal \$12.10.

{¶12} Plaintiff alleged his shower shoes, envelopes, coffee, newspapers and cigarettes were stolen at sometime during June, 1996. It appears plaintiff claimed damages of \$484.80.

{¶13} Plaintiff asserted his sister mailed him a television set and radio in November, 1994. Plaintiff alleged the appliances were stolen by defendants' employees and therefore damages of \$425.00 were claimed.

{¶14} Plaintiff maintained his envelopes and commissary articles were either lost or stolen in October, 1994. Damages claimed amount to \$40.50.

{¶15} Plaintiff alleged he suffered some property loss due to theft in July, 1990. Damages requested amounted to \$47.00.

{¶16} Plaintiff has asserted his total damage claim equals \$2,274.75 for property loss and mental distress attendant to property loss.

{¶17} Defendant has contended all claims asserted by plaintiff which arose from July, 1990 to September, 1998 are barred by R.C. 2743.16, the statute of limitations for filing claims in this court.

{¶18} Defendant has asserted all property belonging to plaintiff which was packed on or about April 21, 2000 was returned to plaintiff's possession. Defendant submitted evidence in the

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{¶19} form of a property inventory bearing plaintiff's signature. On this inventory, plaintiff acknowledged all packed property was returned to him.

{¶20} Additionally, defendant maintained all property it packed on January 28, 2002 was returned to plaintiff's possession by February 12, 2002. Defendant submitted a copy of plaintiff's property inventory which plaintiff signed acknowledging he received all property packed.

{¶21} Defendant denied responsibility for the loss of any property associated with assuming control over plaintiff's property on March 11, 2002. Defendant submitted a copy of plaintiff's property inventory which plaintiff signed acknowledging the document as a complete and accurate inventory of his property. All property packed was ultimately returned.

{¶22} Defendant did not address plaintiff's claims of property loss arising on December 14, 2001, December, 2001, September, 2001, June, 2001, and January 17, 2001.

{¶23} Plaintiff filed a response. After reviewing all evidence submitted by plaintiff, the trier of fact finds all assertions made by plaintiff are not particularly persuasive. Plaintiff has not established any property loss resulting from acts or omissions on the part of defendant.

CONCLUSIONS OF LAW

{¶24} R.C. 2743.16(A) in pertinent part states:

{¶25} ". . . civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

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{¶26} All claims alleging loss which allegedly occurred from July, 1990 to September, 1998 are dismissed pursuant to R.C. 2743.16 (A).

{¶27} Plaintiff's claims for mental anguish and any other extraordinary damages are denied. This court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD, *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271.

{¶28} 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;

{¶29} 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.

{¶30} 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.

{¶31} When an inmate signs a receipt stating defendant received all of his property and the inmate did not contest the fact of this receipt, he failed to show the department of corrections was liable for the alleged property loss. *Yocum v. Chillicothe Correctional Institution* (1978), 78-0142-AD.

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{¶32} Plaintiff's failure to prove delivery of property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶33} Plaintiff has failed to prove, by a preponderance of the evidence, any of his property was lost or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

DANIEL R. BORCHERT
Deputy Clerk

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