

[Cite as *Talanca v. London Corr. Inst.*, 2003-Ohio-109.]

IN THE COURT OF CLAIMS OF OHIO

DOMINIC TALANCA, #330-274	:	
P.O. Box 69	:	
London, Ohio 43140	:	Case No. 2002-07665-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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FINDINGS OF FACT

{¶1} On June 6, 2002, plaintiff, Dominic Talanca and Colton Mason, two inmates incarcerated at defendant, London Correctional Institution, were released from a segregation unit. When plaintiff and inmate Mason were released, their personal property, which had been stored under defendant's custody, was transported on a cart to the release area. Both plaintiff's property and inmate Mason's property were stored in locker boxes which had been placed on the cart, presumably by defendant's personnel. Plaintiff's television set had been placed on top of the locker box containing his personal property.

{¶2} In his complaint, plaintiff stated, "when property was being removed from a cart, the cart became unbalanced causing

locker box and t.v. which sat on top of the locker box on the cart to fall to the floor." Plaintiff indicated his television set was damaged beyond repair when the appliance fell from the cart and crashed onto the floor. Plaintiff maintained defendant is responsible for the damage to his television set and he has consequently filed this complaint seeking to recover \$238.95, the total replacement cost of a new television set, plus filing fees.

{¶3} Defendant's Vault Officer, R. Reeves, wrote an Incident Report concerning the damage to plaintiff's television set on June 6, 2002. Reeves stated in the report that he released property which had been placed on a cart to plaintiff and inmate Mason. Reeves further stated, "as the cart was being unloaded Mason's locker box was removed from the rear of the cart unbalancing it causing Talanca's locker box and the television sitting on top of the box to slide into the floor." Reeves related the television was cracked and did not work after it fell to the floor.

{¶4} Plaintiff submitted an affidavit from inmate Colton Mason concerning his recollection of the events of June 6, 2002. Mason stated, "I observed that when my own locker box was being removed from the property cart, the cart became unbalanced, tipped, and spilled Talanca's locker box and television set onto the cement floor." Mason believed the property cart had not been loaded properly.

{¶5} Defendant denied any liability in this matter. Defendant asserted plaintiff's property was properly loaded on the property cart. Defendant contended both plaintiff and inmate Mason began unloading their property from the property cart and when Mason removed his locker box from the cart, the action caused the cart to tilt. When the cart tilted, plaintiff's locker box and television fell to the floor. Although plaintiff's property was still under defendant's control when it was damaged, defendant has denied responsibility for the damage. Defendant has argued plaintiff failed to produce sufficient proof to establish liability.

{¶6} Plaintiff filed a response. Plaintiff asserted neither he nor inmate Mason unloaded their property from the property cart. Plaintiff insisted his property was damaged while under defendant's control as a proximate cause of some act or omission on the part of defendant. The trier of fact agrees.

CONCLUSIONS OF LAW

{¶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) 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.

{¶9} 3) 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.

{¶10} 4) Plaintiff has proven a causal connection between the damage to his television set and the breach of duty owed by defendant in regard to protecting inmate property under its control.

{¶11} 5) In regard to plaintiff's property damage, negligence by defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶12} 6) As a 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) 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.

{¶14} 8) 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 293. Plaintiff claimed his television set was worth \$213.95. Evidence has shown a new replacement set sells for \$184.95.

{¶15} 9) The court finds defendant liable to plaintiff in the amount of \$184.95, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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

{¶17} IT IS ORDERED THAT:

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

{¶19} 2) Defendant (London Correctional Institution) pay plaintiff (Dominic Talanca) \$209.95 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk