

IN THE COURT OF CLAIMS OF OHIO

STEVE L. HOLCOMB, #384-349 :
P.O. Box 56 :
Lebanon, Ohio 45036 : Case No. 2002-07142-AD

Plaintiff : MEMORANDUM DECISION

v. :

CORRECTIONS RECEPTION 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} On or about November 13, 2001, plaintiff, Steve L. Holcomb, an inmate incarcerated at the Ross Correctional Institution, was transferred to defendant, Corrections Reception Center (CRC). Plaintiff's personal property was inventoried, packed, and delivered into the custody of CRC staff incident to the transfer. After arriving at CRC, plaintiff was assigned to a segregation unit where access to his personal property was limited. Plaintiff indicated at sometime during December 2001, he was transferred from CRC to the Corrections Medical Center for medical treatment. When he returned to CRC plaintiff explained he requested his packed property be returned and was informed there was no property belonging to him stored under the care of CRC

personnel. Subsequently, on February 6, 2002, plaintiff was transferred from defendant's facility to the Lebanon Correctional Institution (LECI). Plaintiff suggested none of his personal property was forwarded from CRC to LECI.

{¶2} Plaintiff has asserted property valued at \$338.00 was lost or stolen while under the control of CRC personnel. Plaintiff maintained the following items are missing: a cassette player, set of headphones, art supplies, a lamp, a fan, a cassette tape, assorted personal hygiene items, two sweat shirts, eleven t-shirts, a pair of gym shorts, four pairs of socks, six pairs of undershorts, and a pair of boots. Plaintiff filed this complaint seeking to recover the replacement value of his alleged missing property, plus filing fee reimbursement.

{¶3} Defendant denied any liability in this matter. Defendant acknowledged plaintiff's personal property was inventoried and packed at the Ross Correctional Institution on November 7, 2001. Plaintiff was transferred along with his property to CRC on November 13, 2001. Defendant asserted all property transferred with plaintiff was given to him by CRC staff. Defendant has argued plaintiff cannot provide proper indicia of ownership of the cassette player and headphones represented in this claim. Defendant speculated plaintiff, "could have traded, loaned, sold or bartered any of the property he claims was lost between November 13, 2001, and February 6, 2002."

{¶4} Defendant contended plaintiff has failed to prove any of his property was lost or stolen while under the control of CRC staff. According to defendant, all property which was transferred to CRC was returned to plaintiff. Additionally, defendant has asserted plaintiff overstated his damage claim in regard to the alleged lost lamp, fan, and headphones.

{¶5} On January 22, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted all claims for property loss are true and accurate. Plaintiff has also

maintained his damage claim is an accurate reflection of the value of his property.

{¶6} Both plaintiff and defendant submitted copies of plaintiff's property inventory dated November 7, 2001 and compiled at the Ross Correctional Institution. All property plaintiff claimed missing is listed on this November 7, 2001 inventory. Both plaintiff and defendant submitted copies of plaintiff's property inventory dated February 6, 2002 and compiled incident to plaintiff's transfer from CRC to LECI. Alleged missing items are not listed on this inventory with the following exceptions: hygiene articles, three t-shirts, and three pairs of underwear. After reviewing the evidence, the trier of fact finds plaintiff owned all property claimed and several articles of plaintiff's property were lost while under defendant's control. These articles include: a cassette player, headphones, one cassette tape, art supplies, a lamp, a fan, two sweat shirts, eight t-shirts, one pair of gym shirts, four pairs of socks, three pairs of undershorts, and a pair of boots.

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 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.

{¶11} 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.

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

{¶13} 7) 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.

{¶14} 8) 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.

{¶15} 9) The court finds defendant liable to plaintiff in the amount of \$250.00, 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.

{¶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 (Corrections Reception Center) pay

plaintiff (Steve L. Holcomb) \$275.00 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

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