

IN THE COURT OF CLAIMS OF OHIO

KEVIN W. ROWE	:	
Plaintiff	:	
v.	:	CASE NO. 2002-11123-AD
LONDON CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) Plaintiff, Kevin W. Rowe, an inmate incarcerated at defendant, London Correctional Institution, has alleged that on or about August 9, 2002, he made a mail order purchase of models from a company identified as Models Expo Incorporated. Plaintiff stated he paid a total of \$69.43 by check for the models he ordered.

{¶2} 2) Plaintiff explained he was transferred to an isolation unit on August 18, 2002, and was consequently prohibited from receiving the models he had ordered. Plaintiff related the models were shipped from Models Expo Incorporated and received by defendant's mailroom personnel during the time he was confined in isolation.

{¶3} 3) Plaintiff implied the shipped models were lost while under the control of defendant's staff. Plaintiff filed this complaint seeking to recover the cost of the models. Plaintiff also requested \$1,430.57 for damage elements not compensable in a claim of this type. Plaintiff's damage claim shall be limited to the replacement value of personal property claimed. Plaintiff submitted the filing fee with the complaint.

{¶4} 4) Defendant acknowledged receiving four models intended for plaintiff. Defendant stated plaintiff is prohibited from receiving the models due to his security status. Model Expo will not accept the models back for refund. Defendant is currently holding the models pending a decision by plaintiff to either authorize the mailing of the models to an

outside address or authorize the destruction of the property. Defendant denied any liability in this matter.

{¶5} 5) Plaintiff filed a response insisting he is entitled to all damages claimed including those damages for “mental injury and stress.” The trier of fact does not believe plaintiff suffered any mental injury or stress due to the fact he was prevented from receiving models.

CONCLUSIONS OF LAW

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

{¶7} 2) The state cannot be sued for the exercise of any executive or planning function involving the making of a policy decision characterized by the use of a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.

{¶8} 3) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶9} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Kevin W. Rowe #239-053
P.O. Box 7010
Chillicothe, Ohio 45601

Plaintiff, Pro se

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

For Defendant

RDK/tad
5/30
Filed 6/11/03
Sent to S.C. reporter 7/3/03