

[Cite as *Canitia v. Trumbull Correctional Inst.*, 2003-Ohio-5551.]

IN THE COURT OF CLAIMS OF OHIO

THOMAS CANITIA :
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 Plaintiff :
 :
 v. : CASE NO. 2003-05739-AD
 :
 TRUMBULL CORRECTIONAL : MEMORANDUM DECISION
 INSTITUTION :
 :
 Defendant :
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FINDINGS OF FACT

{¶1} 1) Plaintiff, Thomas Canitia, an inmate incarcerated at defendant, Trumbull Correctional Institution (TCI), stated he was transferred to a segregation unit on July 25, 2002. Plaintiff asserted that when he arrived at the segregation unit, he delivered his wedding ring to TCI employee, Officer Alberty, who placed the ring in the institution vault.

{¶2} 2) Plaintiff related he was released from segregation on August 26, 2002 and his ring could not be located when he retrieved his personal property upon release. Consequently, plaintiff filed this complaint seeking to recover \$500.00, the replacement value of his wedding ring which plaintiff asserts was lost or stolen as a result of negligence on the part of TCI staff. On May 27, 2003, plaintiff submitted the filing fee.

{¶3} 3) In an unrelated matter, plaintiff claimed his belt was confiscated by a TCI employee identified as Chelsing. Plaintiff explained the buckle on the belt was broken and was held in place by masking tape. According to plaintiff, the confiscated belt was not returned to his possession. Therefore, plaintiff filed this complaint seeking \$15.00 in damages for the loss of the belt.

{¶4} 4) Additionally, plaintiff asserted his 15 packs of cigarettes and 25 envelopes were confiscated by TCI employee, Officer Ball on December 7, 2002. The confiscated cigarettes and envelopes were supposedly never returned and plaintiff seeks \$55.10 for the loss of these items.

{¶5} 5) Defendant admitted liability for the loss of plaintiff's wedding ring. However, defendant contended plaintiff has inflated his damage claim and has not provided any evidence to prove the ring had a value of \$500.00. Defendant suggested plaintiff's damages for the loss of his ring should not exceed \$100.00.

{¶6} 6) Defendant acknowledged confiscating an altered belt from plaintiff. Defendant asserted the belt was state-issued property and therefore, plaintiff was not the actual owner of the belt.

{¶7} 7) Additionally, defendant admitted cigarettes and envelopes were confiscated from plaintiff on December 7, 2002. Defendant argued plaintiff is not entitled to recover the value of these confiscated property items because he has failed to offer proof he actually owned the items. Defendant maintained plaintiff failed to produce commissary receipts establishing he purchased the cigarettes and envelopes.

{¶8} 8) On August 11, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff insisted his ring had a value of \$500.00. Plaintiff did not provide any evidence, other than his own assertion, to show the ring was valued at \$500.00.

{¶9} 9) Plaintiff contended he owned the altered belt which was confiscated by TCI staff. Plaintiff did not supply any evidence to indicate he purchased a belt.

{¶10} 10) Although plaintiff maintained he is entitled to recover the value of the confiscated cigarettes and envelopes, he did not submit any documentation showing he actually purchased these articles from the TCI commissary.

CONCLUSIONS OF LAW

{¶11} 1) Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of

contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1984), 84-09071. In the instant claim, plaintiff failed to offer sufficient proof he owned the confiscated belt, cigarettes, and envelopes. Consequently, plaintiff's damage claim for these articles is denied.

{¶12} 2) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's ring. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

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

{¶14} 4) 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.

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

{¶16} 6) The court finds defendant liable to plaintiff in the amount of \$100.00, 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.

{¶17} 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 plaintiff in the amount of \$125.00, which includes the filing fee. Court costs are assessed against defendant. 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:

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