

[Cite as *Mahone v. Ohio State Penitentiary*, 2003-Ohio-6026.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT MAHONE :
Plaintiff :
v. : CASE NO. 2003-06522-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Robert Mahone, an inmate incarcerated at defendant, Ohio State Penitentiary (OSP), has alleged that his photo album containing 150 photographs was confiscated by an OSP staff member during an October, 2002 shakedown search.

{¶2} 2) Plaintiff asserted the confiscated photo albums was never returned to his possession and is presumed lost.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$2,000.00, the value placed on the alleged lost photographs.

{¶4} 4) Defendant has acknowledged plaintiff's photo album was confiscated and could not be located for a time after it was placed under the control of OSP staff. However, defendant maintained the photo album was subsequently found and returned to plaintiff's possession. Therefore, defendant contended plaintiff has not suffered any property loss damages.

{¶5} 5) On September 2, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff argued the photo album which was returned to him did not contain the 150 photographs that were confiscated during the October, 2002 shakedown.

Plaintiff insisted the confiscated photographs were not returned and have not been located. Plaintiff reasserted his claim for 150 missing photographs.

CONCLUSIONS OF LAW

{¶6} 1) It has been determined by this court that when a defendant engages in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶7} 2) 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} 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.

{¶9} 4) Negligence on the part of defendant has been shown in respect to the loss of plaintiff’s property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶10} 5) 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.

{¶11} 6) 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.

{¶12} 7) Defendant is liable to plaintiff in the amount of \$150.00, 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.

{¶13} 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 \$175.00, 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:

Robert Mahone, #255-225
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Plaintiff, Pro se

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

For Defendant

RDK/laa
10/7
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