

[Cite as *Perry v. London Correctional Inst.*, 2003-Ohio-6265.]

IN THE COURT OF CLAIMS OF OHIO

KYLE PERRY	:	
Plaintiff	:	
v.	:	CASE NO. 2003-07570-AD
LONDON CORRECTIONAL	:	<u>MEMORANDUM DECISION</u>
INSTITUTION	:	
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On April 14, 2003, an employee of defendant, London Correctional Institution, identified as John Petty, broke a television set owned by plaintiff, Kyle Perry, an inmate. Specifically, the outer casing on the television set was cracked when Petty accidentally dropped the appliance.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$150.00, the entire cost of the television set when purchased on August 15, 2002. Plaintiff also seeks recovery of the \$25.00 filing fee which he submitted on August 11, 2003.

{¶3} 3) Defendant acknowledged its employee dropped plaintiff's television set causing a crack in the set's cabinet. Defendant explained the broken cabinet on the television set was repaired. According to defendant, the television set is in good working order after being repaired. Defendant denied any liability in this matter. Defendant contended plaintiff has failed to prove he suffered damages as a result of any act or omission on the part of London Correctional Institution staff.

{¶4} 4) On October 8, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff admitted his television set was repaired "with some old used

case which was found somewhere in the institution.” Plaintiff suggested this repair job by defendant voided the warranty on the device. Plaintiff insisted he is entitled to damages representing the replacement cost of a new set. Plaintiff argued the repairs made by defendant actually diminished the value of his television set.

CONCLUSIONS OF LAW

{¶5} 1) In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant’s breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282.

{¶6} 2) 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.

{¶7} 3) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶8} 4) Plaintiff has failed to prove he suffered any damages as a result of defendant’s act. Plaintiff has failed to prove an essential element to his claim. No recovery can be had where it is not certain plaintiff suffered any damages. *Blank v. Snyder* (1972), 33 Ohio Misc. 67.

{¶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:

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