

[Cite as *Penland v. Madison Correctional Inst.*, 2004-Ohio-3079.]

IN THE COURT OF CLAIMS OF OHIO

ALEX PENLAND :
Plaintiff :
v. : CASE NO. 2003-02527-AD
MADISON CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
:.....

FINDINGS OF FACT

{¶1} On February 3, 2003, plaintiff, Alex Penland, an inmate incarcerated at the Chillicothe Correctional Institution (CCI), was notified by CCI staff that he was to be transferred to defendant, Madison Correctional Institution (MaCI). Incident to this transfer, plaintiff delivered all his personal property into the custody of CCI employees, who then forwarded the property to MaCI. On February 5, 2003, plaintiff and his personal property arrived at MaCI. Plaintiff stated, when he arrived at defendant's facility, he was told by MaCI receiving officer, identified as Correction Officer Flora, to place all his personal property inside a metal box purportedly measuring 2.4 cubic feet. Plaintiff further stated Flora informed him that all additional property which would not fit into the dimensions of the box was subject to destruction, mail out, or donation. Plaintiff asserted he possessed certain property, particularly commissary items and legal materials (documents) that were exempt from institutional 2.4 cubic

feet volume restrictions. All of plaintiff's property which exceeded the 2.4 cubic feet volume restriction was open to confiscation. Plaintiff has sought recovery for the loss of \$150.00 worth of commissary purchases and 40 photographs for property items confiscated, in excess of institutional volume restrictions. Plaintiff may or may not be making a claim for the loss of legal materials. Damage amounts for this claim were set at \$2,500.00. The requisite filing fee was paid.

{¶2} Evidence has shown when plaintiff's property was confiscated during the intake process at MaCI, plaintiff refused to authorize any disposition of items exceeding the 2.4 cubic feet restriction. MaCI personnel confiscated the following items: 1 bottle of shampoo, baby powder, foot powder, 6 soups, 3 soaps, peanut butter, shaving cream, 3 Kool-Aid, creamer, 1 extension cord, 1 jar of coffee, cocoa butter, 1 shower bag, 1 box of sugar, salt and pepper, 4 packages of cookies, cough drops, mouthwash, 1 toothpick, 10 cans of seafood, popcorn, mayonnaise, 8 cans of food, 6 bags of chips, 2 boxes of pastries, 1 jar of pickles, 2 jars of peppers, a pizza kit, 1 bag of walnuts, 1 bottle of spice, garlic powder, 5 t-shirts, miscellaneous legal work, 3 boxes of macaroni and cheese, 3 pairs of underwear, cheese, a bottle of ketchup, a towel, a photo album, a bottle of honey, a box of crackers, a pair of pajamas, summer sausage, a cheese block, gym shorts, 3 meat and cheese sticks, 5 socks, 3 pens, a bag of rice, 5 packaged prepared dinners, and 4 colored t-shirts. Plaintiff refused to authorize either the mail out or the destruction of these confiscated items.

{¶3} On April 9, 2003, defendant's authorized agent applied to the Common Pleas Court of Madison County for an order forfeiting property seized from plaintiff. The particular property of the forfeiture application included the following items: 1 bottle of shampoo, 3 soaps, 6 soups, 1 peanut butter, 3 Kool-Aid, 1 creamer,

1 coffee, 1 box of sugar, salt, pepper, 1 bag cough drops, 10 cans of seafood, 8 canned goods, 1 baby powder, 1 foot powder, 1 shaving cream, 1 extension cord, 1 cocoa butter, 1 shower bag, 4 packages of cookies, 1 mouthwash, 1 box tooth picks, 1 popcorn, 1 mayonnaise, 6 bags of chips, 2 boxes of snack cakes, 1 pickle, 3 jars of peppers, 1 bottle of spices, 1 garlic powder, 3 boxes of macaroni and cheese, miscellaneous legal work, 3 underwear, 1 towel, 1 photo album, 1 pair pajamas, 1 gym shorts, 5 socks, 3 pens, and 4 t-shirts.

{¶4} On May 28, 2003, the authorized agent of MaCl again obtained an order from the Madison County Court of Common Pleas which approved the forfeiture of property seized from plaintiff. The subject forfeited items included the following: 1 bottle of cheese, 10 bottles of catsup, 1 bottle of honey, 1 box of crackers, 1 summer sausage, 1 cheese block, 3 meat and cheese sticks, 1 bag rice, 5 Lipton soups, 1 pizza kit, 1 walnut bar, and 5 t-shirts.

{¶5} Plaintiff has contended he was assured he could keep all his property transferred from CCI to MaCl. Plaintiff noted defendant's policies make certain exceptions for certain types of property which are not covered by the institutional property volume restrictions. Plaintiff claimed the items confiscated from him at MaCl should not have been subject to property volume restrictions and, consequently, the confiscation was violative of defendant's internal policy. Therefore, plaintiff argued he is entitled to damages for the loss of confiscated property taken in violation of defendant's own policy.

{¶6} Defendant denied plaintiff was given any assurances at CCI that he could have all his property upon transfer to MaCl. Defendant acknowledged inmates are permitted to retain legal material in excess of the 2.4 cubic feet property volume restriction. However, it is the particular, "inmate's responsibility to request an extra locker to accommodate his extra legal paperwork." Defendant maintained plaintiff never made a request for an extra locker, although plaintiff submitted a document showing such a request was received at the warden's office of defendant's institution on February 19, 2003, the same day the instant action was filed in this court. Additionally, defendant denied plaintiff had a right to possess

excess commissary purchases upon transfer from one institution to another. Defendant professed the 2.4 cubic feet restriction applies to all commissary items when interinstitutional transfers occur. Defendant explained, after it was determined plaintiff possessed property in excess of the 2.4 cubic feet restriction, he was instructed by MaCI personnel, "to choose what (property) he wanted to keep and sign a disposition of property order to send the remaining items home or have them destroyed." Plaintiff refused to authorize any disposition of his excess property.

{¶7} Consequently, due to plaintiff's refusal to authorize a disposition of his excess property, defendant charged plaintiff with an institutional rule violation. Plaintiff was given until March 7, 2003, to choose some disposition of his excess property, either mail out or destruction. When plaintiff persisted in his refusal to deal with the issue of his excess property, defendant sought an order from the Madison County Court of Common Pleas requesting the forfeiture of plaintiff's property. There is no record plaintiff formally opposed the issuance of a forfeiture order. Defendant stated forfeiture orders were granted on April 9, 2003 and May 28, 2003, and MaCI was accorded court sanction to dispose of the forfeited property. As of October 8, 2003, none of the forfeited property had been destroyed, but remained in storage at MaCI.

{¶8} Furthermore, defendant denied any of plaintiff's legal work or photographs were confiscated during the transfer process from CCI to MaCI. However, defendant acknowledged 129 photographs were taken from plaintiff's possession at some time after plaintiff filed this complaint. Apparently, as of October 14, 2003, these 129 photographs were in the possession of defendant's institutional inspector. The 129 photographs taken by MaCI staff from plaintiff are not the subject photographs of this particular claim.

{¶9} On November 4, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff pointed out MaCI personnel confiscated 40 black and white photographs from his possession when he was transferred from CCI. Plaintiff expressly pointed out the 40 photographs claimed were exclusive and separate from the 129 photographs subsequently confiscated from plaintiff. The original 40 photographs were seemingly subject to the April 9, 2003 forfeiture order issued by the Madison County Court of

Common Pleas (see photo album listed among forfeited property). No other record of photographs confiscated exists.

{¶10} Plaintiff insisted defendant violated its own policy by not permitting him to keep all the property items claimed. Plaintiff contended he should have been permitted to keep all property claimed in this complaint. Plaintiff reasserted defendant did not act properly in regard to the disposition of his property.

{¶11} On September 15, 2003, plaintiff filed a motion for summary judgment, on September 18, 2003, a motion for sanctions and on October 8 and 21, 2003, motions for relief from judgment.

CONCLUSIONS OF LAW

{¶12} 1) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶13} 2) However, in the instant claim, defendant was granted court ordered authority to destroy plaintiff's confiscated property. An inmate plaintiff is barred from recovering the value of confiscated property formally forfeited pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for any forfeited property is dismissed.

{¶14} 3) Plaintiff has no right to pursue a claim for 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 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* (1985), 84-09071. A plaintiff does not maintain any ownership rights in forfeited property or right to pursue a claim for the loss of forfeited property classified as such under a valid court order. This court lacks jurisdiction to hear appeals of orders issued by state common pleas courts. *Pianowski v. Ohio State Penitentiary* (2001), 2001-05464-AD, jud.

{¶15} 4) 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.

{¶16} 5) 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.

{¶17} 6) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss which was the proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶18} 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. All pending motions are hereby DENIED. 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

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4/27

Filed 5/11/04

Sent to S.C. reporter 6/15/04