

[Cite as *Capaniro v. Pickaway Corectional Inst.*, 2004-Ohio-3495.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL CAPANIRO :
Plaintiff :
v. : CASE NO. 2003-10775-AD
PICKAWAY CORRECTIONAL INST. : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On or about August 6, 2003, plaintiff, Michael Capaniro, an inmate incarcerated at defendant, Pickaway Correctional Institution (PCI), was transferred to a segregation unit. Plaintiff stated all his personal property was packed and delivered into the custody and control of PCI personnel incident to the transfer to a segregation unit.

{¶2} 2) Subsequently, on or about August 15, 2003, plaintiff was again transferred from PCI to the Chillicothe Correctional Institution (CCI). Plaintiff asserted that his personal property was not forwarded to CCI from defendant's institution. Plaintiff alleged all his property which was packed on August 6, 2003, was lost while under the care of PCI staff. The alleged lost property items included clothing, foodstuffs, personal hygiene articles, photographs, letters, tobacco products, and sundry items. Plaintiff maintained more than 350 separate articles of property were lost by defendant.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$1,786.91 for the loss of his photographs and letters. Plaintiff claimed \$713.09 in damages for the remainder of his property. Plaintiff's total damage claim of \$2,500.00 represents the statutory maximum relief request under R.C. 2743.10. The requisite filing fee was paid.

{¶4} 4) Defendant explained, "a box of rotten food belonging to plaintiff" was destroyed on September 12, 2003, by a PCI employee. Defendant further explained, an additional box of plaintiff's property was actually sent from PCI to CCI at sometime after plaintiff was transferred to CCI. Apparently defendant did not compile an inventory of the contents of this box. On October 8, 2003, an inventory of plaintiff's property was made by CCI personnel. This inventory includes some property items plaintiff had claimed were lost. Defendant admitted liability in the amount of \$33.95, for plaintiff's food items which were destroyed by PCI staff. Furthermore, defendant admitted liability in the amount of \$104.60, for the loss of the following property: six pairs of boxer shorts, house slippers, a sweat-suit, a pair of gym shorts, headphones, a set of thermal underwear, and a washcloth. Defendant also admitted liability for the loss of plaintiff's photographs in the amount of \$75.00.

{¶5} 5) Defendant denied liability for extraordinary damages for the loss of photographs or any additional property loss claimed by plaintiff. Defendant contended plaintiff has failed to produce evidence establishing PCI staff lost or destroyed any property in addition to items included in the admissions of liability. Defendant correctly asserted plaintiff is not entitled to recover damages for sentimental value for the loss of photographs. See *Nash v. Chillicothe Correctional Institution, et al.* (1986), 85-07382-AD.

{¶6} 6) On March 15, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff acknowledged he did regain possession of some property items he originally listed as lost in his complaint. Plaintiff stated he, "agrees with liability of defendant in the amount of \$33.95 only for food defendant identified as destroyed." Plaintiff further stated he, "agrees with \$104.60 for defendant's liability for items of

property listed in defendant's Investigation Report." Plaintiff maintained he went to the PCI commissary on August 5, 2003, and made \$50.00 worth of purchases. Plaintiff professed the food destroyed by PCI staff consisted of all the commissary purchases he made on August 5, 2003. Therefore, plaintiff insisted he is entitled to receive an additional \$16.05 in damages for the food allegedly destroyed by PCI staff. Plaintiff also claimed the entire contents of a food package he received on July 30, 2003, were among the food items destroyed by PCI employees. Plaintiff argued he should recover the value of all items contained in the July 30, 2003 food package. Plaintiff implied he did not consume any items from the package he received. Also, plaintiff contended he should receive the replacement value for a radio/cassette player, a pair of K-Swiss gym shoes, five cassette tapes, and tobacco products. Plaintiff asserted these articles were lost at PCI. Defendant professed there is no record plaintiff possessed a radio/cassette player, tapes, K-Swiss gym shoes, and tobacco products at PCI. Plaintiff did not offer sufficient evidence to establish a radio/cassette player, a pair of K-Swiss gym shoes, cassette tapes, and tobacco products were lost at PCI. Plaintiff declared he purchased an additional set of thermal underwear and has requested he receive damages for the purchase price of this second set. However, evidence presented has shown plaintiff purchased one set of thermal underwear.

CONCLUSIONS OF LAW

{¶7} 1) Although not strictly responsible for a prisoner's property, defendant had at least a 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.

{¶8} 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.

{¶9} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶10} 4) Plaintiff's failure to prove delivery of certain items of property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶11} 5) Negligence on the part of defendant has been shown in respect to the loss of the property subject to admissions by defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶12} 6) Plaintiff has failed to prove, by a preponderance of the evidence, any additional listed property was lost or destroyed as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶13} 7) 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. Plaintiff is entitled to receive reasonable damages for the loss of his photographs.

{¶14} 8) The court finds defendant liable to plaintiff in the amount of \$288.55, 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.

{¶15} 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 \$313.55, 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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5/18
Filed 6/2/04
Sent to S.C. reporter 6/29/04