

[Cite as *Bay v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-7296.]

IN THE COURT OF CLAIMS OF OHIO

JAMES M. BAY :

Plaintiff : CASE NO. 2002-07231
Judge Fred J. Shoemaker

v. :

DECISION

OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION :

Defendant

: : : : : : : : : : : : : : :

{¶ 1} This court previously rendered judgment in favor of plaintiff and defendant was found liable for false imprisonment. The case proceeded to trial on November 4, 2004, on the issue of damages. The parties informed the court that the period of false imprisonment amounted to 89 days, from July 26, 1999, to October 24, 1999. Although plaintiff argued that defendant miscalculated the number of days of good-time credit that plaintiff accrued for attending school while he was incarcerated, defendant established at the liability trial that this type of credit can be earned only after an inmate has resided at least one full calendar month at the parent institution. Thus, any course work completed by plaintiff either while he was housed at the Correctional Reception Center or prior to his first full month at North Central Correctional Institution did not result in the accrual of good-time credit.

{¶ 2} Based on the testimony and evidence produced at plaintiff's liability and damages trials, the court finds that

plaintiff was falsely imprisoned by defendant for a period of 89 days, from July 26, 1999, through October 24, 1999.

{¶ 3} Upon review of all of the evidence, this court finds that plaintiff was not a person who was found to be wrongfully imprisoned under R.C. 2743.48; rather, plaintiff was an inmate, properly incarcerated, whose incarceration was terminated 89 days late.

{¶ 4} In the instant action, plaintiff concedes that he is not a "wrongfully imprisoned" individual as that term is defined in R.C. 2743.48. Consequently, plaintiff's damages for false imprisonment are to be determined in accordance with the common law rather than the statutory framework of R.C. 2743.48(E)(2). *Corder v. Ohio Dept. of Rehab. & Corr.* (1996), 114 Ohio App.3d 360. Upon review, the court finds that plaintiff's testimony was sufficient to justify an award of \$4,916.95 for the 89 days during which he was falsely imprisoned.

{¶ 5} The court may consider R.C. 2743.48 in determining the amount of plaintiff's damages, which may include compensation for loss of freedom and emotional distress. *Corder*, at 366. See, also, *Clark v. Ohio Dept. of Rehab. and Corr.* (2000), 104 Ohio Misc.2d 14; *Rainey v. Lorain Correctional Facility* (1997), 121 Ohio App.3d 428.

{¶ 6} R.C. 2743.48(E)(2) entitles an innocent person who is found to be wrongfully imprisoned under that statute to receive compensation equaling the total of each of the following amounts:

{¶ 7} "(a) ***;

{¶ 8} "(b) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, *forty thousand three hundred thirty dollars* *** and for each part of a year of

being so imprisoned, a pro-rated share of forty thousand three hundred thirty dollars ***;

{¶ 9} "(c) Any loss of wages, salary, or other earned income that directly resulted from the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment." (Emphasis added.)

{¶ 10} At the damages trial, plaintiff offered testimony regarding the despondency he experienced while trying to effectuate his release from custody. Plaintiff described witnessing acts of violence committed by and upon other inmates. Plaintiff explained that the injustice he experienced had a profound effect on his mental and physical health and that he continues to struggle with this burden daily.

{¶ 11} The court notes that "plaintiff's emotional injuries are compensable as an element of damages for false imprisonment." *Rainey*, supra, at 432. In *Clark*, supra, this court found that an additional award for emotional injuries as a result of the false imprisonment was warranted. Likewise, the court finds in the instant case that, based on the totality of the evidence, plaintiff is entitled to an additional \$1,000 as compensation for his ongoing mental distress.

{¶ 12} Plaintiff must prove by a preponderance of the evidence that he sustained lost wages, salary, or other income as a result of his false imprisonment. *Clark*, supra, at 17. At trial, plaintiff testified that he suffered from a back injury, that he was confined to a wheelchair, and that he was unable to work. Plaintiff explained that upon his release from prison he would have been entitled to receive Social Security Disability in lieu of earned income in the amount of \$525 per month. Upon review, the court finds that plaintiff provided sufficient credible evidence to

show that he incurred a total of \$1,575 for lost income in August, September, and October 1999.

{¶ 13} Accordingly, the court concludes that plaintiff has proven, by a preponderance of the evidence, that he is entitled to an award in the total amount of \$7,516.95 for his false imprisonment, such amount to include reimbursement of the \$25 filing fee.

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JUDGMENT ENTRY

OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION :

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: : : : : : : : : : : : : : : :

This case was tried to the court on the issue of damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiff in the amount of \$7,516.95 which includes the filing fee paid by plaintiff. 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.

FRED J. SHOEMAKER
Judge

Entry cc:

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