

[Cite as *James v. Toledo Corr. Inst.*, 2004-Ohio-5913.]

IN THE COURT OF CLAIMS OF OHIO

CURTIS LEWIS JAMES	:	
Plaintiff	:	
v.	:	CASE NO. 2004-05589-AD
TOLEDO CORRECTIONAL INST., et al.	:	<u>MEMORANDUM DECISION</u>
Defendants	:	
	:	
	:	

FINDINGS OF FACT

{¶ 1} 1) On or about August 12, 2003, plaintiff, Curtis L. James, an inmate, was transferred from defendant, Toledo Correctional Institution (ToCI) to defendant, Warren Correctional Institution (WCI). Plaintiff’s personal property was forwarded from ToCI to WCI incident to the transfer. However, plaintiff asserted his Koss stereo headphones and various art supplies were not sent from ToCI to WCI. Consequently, plaintiff filed this complaint seeking to recover damages for the alleged loss of his headphones and art supplies.

{¶ 2} 2) In a completely unrelated matter, plaintiff explained he was transferred from cell 164 to cell 178 at WCI on October 23, 2003. After moving to his new cell, plaintiff related he discovered several items of his personal property were missing and apparently had not been moved to cell 178. Plaintiff maintained his property was stolen during the cell transfer on October 23, 2003. According to plaintiff, his Super III radio, eleven cassette tapes, plastic spoon, water heater, and a pack of sewing needles were stolen. Plaintiff filed this complaint seeking to recover the total replacement cost of his alleged stolen property items. Total damage claim for all property claimed amounts to \$333.94. The requisite material filing fee was paid.

{¶ 3} 3) Plaintiff submitted a copy of his property inventory dated August 11, 2003, and compiled by ToCI personnel. This August 11, 2003, inventory lists a set of Koss headphones and two sacks of art supplies were packed for subsequent transfer to WCI. Plaintiff submitted a second

property inventory compiled on August 12, 2003, after the transfer to WCI. No headphones and art supplies are listed on this second inventory.

{¶ 1} 4) Defendant admitted liability for the loss of plaintiff's headphones and certain specified art supplies consisting of five rulers. Defendant acknowledged plaintiff suffered damages for these lost articles in the amount of \$22.36. Defendant did not explain how five rulers constituted "two sacks" of art supplies listed on plaintiff's August 11, 2003, property inventory compiled at ToCI.

{¶ 2} 5) Defendant denied any liability for the loss of plaintiff's radio, cassette tapes, spoon, water heater, and sewing needles which were reported stolen on October 23, 2003. Defendant related all the property claimed, with the exception of the radio, was stored in a locked locker box. Defendant contended there is no evidence, other than plaintiff's assertion, that his property was stolen on October 23, 2003. Furthermore, defendant argued plaintiff failed to establish WCI staff breached any duty owed to him in regard to protecting his property. Plaintiff reported the theft of his property to WCI personnel. Although the theft was reported, the theft report indicates WCI staff did not investigate the theft and did not conduct a search for plaintiff's property after plaintiff reported the property theft.

{¶ 3} 6) Plaintiff asserted he should be entitled to recover damages for all items claimed. Plaintiff filed a response on September 2, 2004.

#### CONCLUSIONS OF LAW

{¶ 4} (1) Although not strictly responsible for a prisoners' 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.

{¶ 5} (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.

{¶ 6} (3) 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.

{¶ 7} (4) The mere fact a theft occurred is not enough to show defendant was negligent. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. southern Ohio Correctional Facility* (1985), 84-02425.

{¶ 8} (5) Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 9} (6) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD.

{¶ 10} (7) Defendant's failure to search for plaintiff's stolen items constituted a breach of defendant's duty to make reasonable attempts to recover stolen property. *Mullett*, supra.

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

{¶ 12} (9) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 13} (10) Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only a 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.

{¶ 14} (11) Defendant is liable to plaintiff in the amount of \$225.00, 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.

IN THE COURT OF CLAIMS OF OHIO

CURTIS LEWIS JAMES :

Plaintiff :

v.

:

CASE NO. 2004-05589-AD

TOLEDO CORRECTIONAL INST., :  
et al.

ENTRY OF ADMINISTRATIVE  
DETERMINATION

:

Defendants

.....

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 \$250.00, which includes the filing fee. Court costs are assessed against defendants. 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:

Curtis L. James, #305-740  
5787 St. Rt. 63  
P.O. Box 120  
Lebanon, Ohio 45036-01200

Plaintiff, Pro se

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

For Defendant

RDK/laa  
9/28  
Filed 10/15/04  
Sent to S.C. reporter 11/3/04