

[Cite as *Hemsley v. N. Cent. Correctional Inst.*, 2005-Ohio-4613.]

IN THE COURT OF CLAIMS OF OHIO

GREG HEMSLEY :  
Plaintiff :  
v. : CASE NO. 2005-03946-AD  
NORTH CENTRAL CORRECTIONAL : MEMORANDUM DECISION  
INSTITUTION :  
Defendant :  
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Greg H. Hemsley, a former inmate incarcerated at defendant, North Central Correctional Institution ("NCCI"), asserted that NCCI personnel lost two pairs of his prescription eyewear which had been received at the NCCI mailroom on November 9, 2004. Plaintiff pointed out the prescription eyewear consisted of one pair of clear eyeglasses and one pair of sunglasses which had been shipped from a Lenscrafters outlet in Fort Wayne, Indiana through DHL Worldwide Express, Inc. ("DHL") to defendant's institution. As a result of the loss of his property, plaintiff filed this complaint seeking to recover \$625.02, the total replacement cost of two pairs of eyewear, plus related expenses. The filing fee was paid.

{¶ 2} 2) Plaintiff stated he obtained an eyeglass prescription from defendant's optometrist and sent the written prescription to his wife in Fort Wayne, Indiana. Plaintiff further stated his wife then took the eyewear prescription along with an existing pair of prescription sunglasses to a Lenscrafters outlet in Fort Wayne. Through the received prescription, Lenscrafters made a new pair of

no line bifocal eyeglasses for plaintiff. Plaintiff explained Lenscrafters subsequently shipped both the complete prescription bifocal eyewear and the delivered sunglasses (Maui Jim brand) to NCCI via DHL. On November 9, 2004, a package from Lenscrafters addressed to plaintiff was received at NCCI. The package weighed about 2 lbs. After delivery, the package was lost while under the control of NCCI employees.

{¶ 3} 3) Defendant acknowledged a package from Lenscrafters, addressed to plaintiff, arrived at NCCI and was subsequently lost before it could be forwarded. Defendant did not verify the contents of the package before the package was lost. Defendant admitted liability for the contents of the package, which defendant suggested consisted of a single pair of prescription eyewear. Defendant asserted plaintiff has not presented sufficient evidence to prove a second pair of eyeglasses was contained in the package sent from Lenscrafters. Defendant contended plaintiff's evidence does not support the allegation Lenscrafters shipped two pairs of eyewear via DHL to NCCI.

{¶ 4} 4) Plaintiff originally filed a written note from Tim Stauffer, an employee of Lenscrafters. Stauffer wrote the following information regarding plaintiff's eyewear: "The glasses that were purchased here on Oct. 28, 2004 were a total of \$312.45 for frame and lenses. Sunglasses would also cost in the range of \$300.00." Stauffer did not specifically indicate whether one or two pairs of eyeglasses were shipped from Lenscrafters through DHL to defendant's institution. Plaintiff contended submitted documents have established Lenscrafters shipped two pairs of glasses.

{¶ 5} 5) Additionally, defendant related that pursuant to internal rules prior approval is required for an inmate to obtain a pair of prescription sunglasses. Defendant maintained plaintiff

did not receive prior approval to possess sunglasses and therefore, if sunglasses were received at NCCI for plaintiff, the particular eyewear would be declared impermissible contraband. Defendant professed plaintiff should have no right to recover for the loss of impermissible contraband.

{¶ 6} 6) In his response to defendant's investigation report, plaintiff submitted a copy of the prescription he obtained from defendant's optometrist. Plaintiff emphasized a notation written on this prescription stating: "can get transition/sunglasses (FT-28 OR NOLINE) SV or bifocal." Plaintiff insisted the notation "transition/sunglass" means he was granted permission to obtain a pair of transition lense glasses and/or a pair of prescription sunglasses. The trier of fact disagrees. The virgule / symbol plaintiff contends means and/or could also substitute in the context used for the word or. In the absence of an offered defining explanation from the actual drafter of the prescription, the trier of fact is reluctant to adopt plaintiff's definition of what / was meant to symbolize or convey. Furthermore, adopting plaintiff's contention that this prescription constitutes an authorization to obtain two pairs of eyewear, the prescription does not serve as evidence two pairs of eyeglasses were actually shipped from Lenscrafters via DHL to NCCI.

{¶ 7} 7) However, plaintiff did submit a second clarifying statement from Lenscrafter's employee Tim Stauffer who declared both clear eyeglasses and sunglasses intended for plaintiff were shipped from Lenscrafters to NCCI. Also, plaintiff filed a written statement from his mother, Sevem A. Strahm, who recalled originally purchasing the subject sunglasses from an optical company in California and then sending the sunglasses to Indiana for further shipment. Strahm related the entire purchase price of the sunglasses amounted to \$304.00.

CONCLUSIONS OF LAW

{¶ 8} 1) An inmate plaintiff may recover for the loss of contraband in a situation where the contraband items have not been properly forfeited to the state. See *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. In the instant claim the issue of sunglasses constituting contraband is not relevant. No declaration was made and no forfeiture authorization was obtained.

{¶ 9} 2) Negligence on the part of defendant has been shown in respect to all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

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

{¶ 11} 4) 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 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.

{¶ 12} 5) The court finds defendant liable to plaintiff in the amount of \$625.02 for property loss and related expenses, plus \$25.00 for filing fee reimbursement.

IN THE COURT OF CLAIMS OF OHIO

GREG HEMSLEY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03946-AD
NORTH CENTRAL CORRECTIONAL INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>

