

[Cite as *Clark v. Ohio State Penitentiary*, 2006-Ohio-7185.]

IN THE COURT OF CLAIMS OF OHIO

DAVID CLARK	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01319-AD
OHIO STATE PENITENTIARY	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, David Clark, an inmate incarcerated at defendant, Ohio State Penitentiary ("OSP"), filed a complaint alleging his three wash cloths, five towels, blanket, soap, and oil were lost while under the control of OSP staff. Plaintiff's property items were lost at sometime between June 17, and July 6, 2005.

{¶ 2} 2) Plaintiff seeks damages in the amount of \$76.71, the estimated total replacement cost of new property items, including such costs as shipping and handling. Plaintiff submitted evidence showing he purchased a blanket on September 24, 2004, for \$26.00. The blanket was shipped with other purchased articles. Total shipping expenses for all articles purchased amounted to \$3.95. Plaintiff submitted an invoice establishing he purchased three wash cloths and four towels, as well as many other items, on September 27, 2004. Purchase price of the towels and wash cloths was \$32.79. An additional charge of \$4.00 for shipping was included for all items purchased on September 27, 2004. Plaintiff submitted evidence showing the

purchase price of soap and oil at the OSP commissary amounts to \$3.99. The filing fee was paid.

{¶ 3} 3) Defendant admitted liability for the loss of all property items claimed. However, defendant disputed plaintiff's damage claim as excessive. Defendant reasoned since the wash cloths, towels, and blanket were at least nine months old at the time of loss the property had depreciated in value from the original purchase price. Defendant contended plaintiff is entitled to the fair market value of his property at the time of loss. Defendant assessed plaintiff's damages for lost property at \$55.00.

{¶ 4} 4) In his response to defendant's investigation report, plaintiff insisted he should receive his total damage claim. Plaintiff explained his oil and soap had not been used and therefore he is entitled to the entire purchase price of these items. Plaintiff related his wash cloths, towels, and blanket were probably only six months old due to the fact the items had been placed in storage for several months after purchase and had not been used. Plaintiff contended none of his property claimed had "diminished (in value) in any calculable way."

CONCLUSIONS OF LAW

{¶ 5} 1) 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.

{¶ 6} 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.

{¶ 7} 3) 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.

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

{¶ 9} 5) 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.

{¶ 10} 6) Defendant is liable to plaintiff in the amount of \$55.00, 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

DAVID CLARK	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01319-AD
OHIO STATE PENITENTIARY	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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

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 \$80.00, 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:

David Clark, #254-389
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation

For Defendant

and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa

5/5

Filed 6/1/06

Sent to S.C. reporter 3/1/07