

[Cite as *Kemp v. Ohio State Penitentiary*, 2006-Ohio-7247.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES KEMP	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2006-02587-AD
	:	
OHIO STATE PENITENTIARY	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On February 2, 2006, plaintiff, Charles Kemp, an inmate incarcerated at defendant, Ohio State Penitentiary ("OSP"), was transferred to the Southern Ohio Correctional Facility ("SOCF"). Plaintiff's personal property which had apparently been under the custody and control of OSP staff since December 5, 2005, was transferred with plaintiff to SOCF on February 15, 2006.

{¶ 2} 2) Plaintiff originally asserted his personal color television set, headphones, 974 photographs, pair of shoes, pair of earbuds, and four compact discs were lost or stolen while under the care of OSP personnel. Plaintiff filed this complaint seeking to recover \$228.65, the estimated replacement value of his alleged missing property. The filing fee was paid.

{¶ 3} 3) Plaintiff submitted a copy of his property inventory dated February 2, 2006, compiled at OSP. The inventory lists a "state" television set, four compact discs, pictures, and sport shoes. A personal television set and earbuds are not listed. Under contraband, the listing includes "350 pictures over limit"

and "1 altered headphones."

{¶ 4} 4) Plaintiff subsequently requested his claims for the shoes and earbuds be removed since he received reimbursement for the cost of these items.

{¶ 5} 5) Defendant acknowledged 350 photographs were confiscated from plaintiff and destroyed without proper authorization. Altered headphones were also confiscated and destroyed. Defendant asserted four compact discs were returned to plaintiff's possession upon his arrival at SOCF. Defendant seemingly admitted plaintiff's television set was lost or destroyed. Defendant maintained plaintiff's damages for the loss of his 350 photographs and television set should be limited to \$300.00. Defendant denied liability for compact discs, additional photographs, and altered headphones. Defendant pointed out the issue concerning the loss of shoes and earbuds has been resolved.

{¶ 6} 6) Plaintiff responded in his response to defendant's investigation report by asserting all his photographs claimed (974) are missing. Plaintiff insisted he should receive \$1,948.00 alone for the loss of all 974 photographs claimed. Plaintiff also appears to be reasserting his claim for his television set and headphones.

{¶ 7} 7) Plaintiff's complaint was amended on July 6, 2006, setting his damage claim at \$2,185.25, and formally removing the claims for shoes and earbuds.

CONCLUSIONS OF LAW

{¶ 8} 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.

{¶ 9} 2) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶ 10} 3) 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.

{¶ 11} 4) 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. However, plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, 2005-05183-AD; jud,

2005-Ohio-4320; *Griffin v. Ohio Department of Corrections* (2006), 2005-08271-AD.

{¶ 12} 6) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Plaintiff's claim for his altered headphones is denied.

{¶ 13} 7) Negligence on the part of defendant has been shown in respect to the loss of a television set and 350 photographs. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, additional photographs and compact discs were improperly seized or destroyed as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 15} 9) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶ 16} 10) 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.

{¶ 17} 11) The standard measure of damages for personal property loss is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40.

{¶ 18} 12) In a situation where a damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original cost, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282.

{¶ 19} 13) Plaintiff has suffered damages in the amount of \$500.00, 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

CHARLES KEMP :

Plaintiff :

v. :

CASE NO. 2006-02587-AD

OHIO STATE PENITENTIARY :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

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

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 \$525.00, 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:

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7/27

Filed 8/17/06

Sent to S.C. reporter 4/5/07