

[Cite as *Calhoun v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7252.]
IN THE COURT OF CLAIMS OF OHIO

ROBERT CALHOUN :
 :
 Plaintiff :
 :
 v. : CASE NO. 2006-03222-AD
 :
 DEPARTMENT OF REHABILITATION : MEMORANDUM DECISION
 AND CORRECTIONS :
 :
 Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) On September 1, 2005, plaintiff, Robert Calhoun, an inmate incarcerated at defendant's Oakwood Correctional Facility, suffered property damage when his eyeglasses were broken by a fellow inmate. Plaintiff related the broken glasses were handed over to defendant's employee, identified as Art West P.A., to determine if the glasses could be repaired.

{¶ 2} 2) The broken eyeglasses were subsequently discarded by defendant's staff. Consequently, plaintiff filed this complaint seeking to recover \$316.00, the stated replacement cost of the glasses. Apparently, the eyeglasses were purchased by plaintiff's sister at sometime between September 19, 2003, when plaintiff was released on parole, and January 26, 2005, when plaintiff returned for incarceration at defendant's facility. Plaintiff contended defendant should bear liability for replacing his glasses since the property was discarded without any proper authorization. The filing fee was waived.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant acknowledged discarding the broken glasses. Defendant stated plaintiff, "was offered an optometrist appointment for a new refraction and new state-issue glasses," but refused this offer.

{¶ 4} 4) Plaintiff filed a response.

CONCLUSIONS OF LAW

{¶ 5} 1) 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

{¶ 6} 2) Negligence on the part of defendant has been shown in respect to the loss of plaintiff's eyeglasses. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 7} 3) 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. The eyeglasses were not only broken, but depreciable property.

{¶ 8} 4) 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.

{¶ 9} 5) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40. Defendant is liable to plaintiff in the amount of \$160.00, the determined value of the destroyed property.

IN THE COURT OF CLAIMS OF OHIO

ROBERT CALHOUN :

Plaintiff :

v. :

CASE NO. 2006-03222-AD

DEPARTMENT OF REHABILITATION AND CORRECTIONS :

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 \$160.00. 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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For Defendant

RDK/laa

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