

[Cite as *Will v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-228.]

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

---

RONALD WILL

Plaintiff

v.

DEPARTMENT OF REHABILITATION  
AND CORRECTION

Defendant

Case No. 2005-06813

Judge J. Craig Wright  
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} Plaintiff brought this action against defendant alleging defamation and conversion. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court on the issue of liability. At all times relevant, plaintiff was an inmate at the Madison Correctional Institution (MaCI) in the custody and control of defendant pursuant to R.C. 5120.16.

{¶2} At the commencement of the proceedings, the court heard arguments on defendant's July 18, 2006, motion in limine to preclude plaintiff from introducing any documents at trial that had not been produced to defendant's counsel during discovery. Defendant's motion was GRANTED.

{¶3} Plaintiff testified that on February 9, 2004, Corrections Officer (CO) Virgil Love confiscated his television set after informing him that it was contraband. Plaintiff also asserts that COs made defamatory statements about him to other inmates.

{¶4} Turning first to plaintiff's defamation claim, the essential elements of a defamation action, whether slander or libel, are that the defendant made a false statement, that the false statement was defamatory, that the false defamatory statement was published, that the plaintiff was injured and that the defendant acted with the required degree of fault. *Celebrezze v. Dayton Newspapers, Inc.* (1988), 41 Ohio App.3d 343. Defamatory matter is defined as that which is injurious to another's reputation. *Gertz v. Robert Welch, Inc.* (1974), 418 U.S. 323. In an action for defamation, plaintiff's prima facie case is made "when he has established a publication to a third person for which defendant is responsible, the recipient's understanding of the defamatory meaning, and its actionable character." *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 243. Absent a "publication" by defendant, plaintiff cannot establish a prima facie case of defamation. *Froehlich v. Ohio Dept. of Mental Health*, 123 Ohio Misc.2d 1, 2003-Ohio-1277.

{¶5} Plaintiff testified that he was called "a liar" and that defendant's employees tried to "make him look bad" whenever he filed a complaint or grievance. Inmate Norman Whiteside testified that several inmates stated that plaintiff could not be trusted. However, Whiteside admitted that he had never heard defendant's employees make any defamatory statements about plaintiff. Plaintiff did not present any witness testimony corroborating his assertion that defendant's employees had made defamatory statements about him.

Case No. 2005-06813	- 3 -	MAGISTRATE DECISION
---------------------	-------	---------------------

{¶6} Although plaintiff claims that defendant's responses to his grievances and other documents contain defamatory statements, he was unable during trial to identify any such defamatory statements.

{¶7} Based upon the evidence and testimony at trial, plaintiff has failed to show that defendant's employees either made defamatory statements about him or published such statements. In short, plaintiff has failed to meet his burden of proof for his defamation claim.

{¶8} Plaintiff next claims that CO Love unlawfully confiscated his television. Defendant asserts that plaintiff's television is contraband which plaintiff had no right to possess.

{¶9} "Conversion is 'the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights.'" *Nott Enterprises, Inc. v. Nicholas Starr Auto L.L.C., dba 1st Choice Auto*, 110 Ohio St.3d 112, 2006-Ohio-3819, citing *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96.

{¶10} Ohio Adm.Code 5120-9-55 states in part, that:

{¶11} "(2) 'Minor Contraband,' as used in this rule, shall refer to items possessed by an inmate without permission and:

{¶12} "\*\*\*\*; or

{¶13} "(d) An allowable item is possessed by an inmate in an altered form or condition."

{¶14} CO Love testified that on the date of the incident, he conducted a "shakedown" of plaintiff's cell in search of contraband. Love noticed that the top of plaintiff's television set appeared to have been sanded down and that plaintiff's name and inmate number were not etched onto the television in accordance with MaCI's policy. Love determined that because of the "alteration" the television was considered contraband.

Case No. 2005-06813	- 4 -	MAGISTRATE DECISION
---------------------	-------	---------------------

Love testified that he confiscated the television and wrote plaintiff a “conduct ticket,” pursuant to Ohio Adm.Code 5120-9-06(C)(51), which states that it is a violation for an inmate to possess altered property or contraband.

{¶15} Plaintiff testified that MaCI employees etched a number onto the top of his television when it was sent to the institution; however, he could not explain why certain areas were altered. On cross-examination, plaintiff acknowledged that the sanded areas made the television contraband.

{¶16} Lieutenant Peterman and Institutional Inspector Virginia Workman both testified that the sanded areas on the television made the item contraband. CO Tucker, an officer in the receiving area at MaCI, testified that all property must be engraved with a name, inmate number and date when it is received by the institution. Upon examination of the television in question (Joint Exhibit A), CO Tucker testified that the engraving on plaintiff’s television was inconsistent with the engraving method used at MaCI, and that the sanded areas on the set made it contraband.

{¶17} Upon consideration of the testimony and evidence presented, the court finds that defendant properly determined that plaintiff’s television was contraband, which made it subject to confiscation. Accordingly, plaintiff’s claim for conversion must fail.

{¶18} For the foregoing reasons, judgment is recommended in favor of defendant.

*A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

Case No. 2005-06813	- 5 -	MAGISTRATE DECISION
---------------------	-------	---------------------

---

STEVEN A. LARSON  
Magistrate

cc:

Ronald Will, #160-692 P.O. Box 740 London, Ohio 43140		
Jana M. Brown Velda K. Hofacker Carr Assistant Attorneys General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130		
MR/cmd		

Filed January 3, 2007  
To S.C. reporter January 22, 2007