

[Cite as *Lomax v. Southeastern Corr. Inst.*, 2007-Ohio-3751.]

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

ERIC LOMAX

Plaintiff

v.

THE SOUTHEASTERN
CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-01363-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On March 3, 2006, an employee of defendant, Southeastern Correctional Institution (“SCI”), confiscated six compact discs and one photo album from the possession of plaintiff, Eric Lomax, an inmate incarcerated at SCI. The confiscated items were placed in the SCI property vault. On March 6, 2006, plaintiff was transferred from the SCI general population to a segregation unit for an institutional rule violation (possession of contraband).

{¶ 2} 2) On March 6, 2006, plaintiff’s personal property, which had been in his possession, was inventoried, packed, and delivered into defendant’s custody. Defendant submitted a copy of plaintiff’s property inventory (dated March 6, 2006) with the notation plaintiff was present at the time the property was packed. The inventory sheet bears plaintiff’s signature under the caption: “I certify the above listed items are a complete and accurate inventory of all my personal property.” Plaintiff maintained defendant took possession of his television set, a pair of Nike shoes, and a set of headphones in addition to the compact discs and photo album that had been confiscated on March 3, 2006. The television set, Nike shoes, headphones, compact discs, and photo album are not listed on the March 6, 2006, property inventory, although the “assorted pictures” category is marked on this particular inventory sheet. On May 11, 2006, plaintiff’s property was reinventoried incident to his transfer from SCI to Ross Correctional Institution. A copy of this inventory is contained in the claim file. The May 11, 2006, inventory lists plaintiff as being present during the time his property was packed and bears plaintiff’s signature acknowledging the inventory as a complete and accurate listing of his property. Nike shoes, headphones, compact discs, a television set, and a photo album are not listed on the May 11, 2006, inventory, although forty-two photographs as well as a television cable and remote control are listed. SCI personnel apparently exercised control over plaintiff’s property from March 6, 2006, until he was transferred to Ross Correctional Institution on May 11, 2006.

{¶ 3} 3) Plaintiff asserted the photo album and compact discs that were confiscated on March 3, 2006, were never returned to his possession. Furthermore, plaintiff asserted his television set, Nike shoes, and set of headphones were delivered to SCI staff and then stored in the SCI property vault beginning on or about March 6, 2006. Plaintiff related the television set, Nike shoes, and headphones were never returned to him. Plaintiff submitted documents showing he purchased a television set on or about

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January 6, 2006, and received or purchased compact discs at various times during 2005. Plaintiff also submitted a document showing a deduction from his inmate account for a shoe purchase was made on March 9, 2006, several days after he was transferred to a segregation unit during a time when the bulk of his personal property was being stored in the SCI vault. Plaintiff filed several informal complaints regarding the status of his property confiscated on March 3, 2006. Defendant, upon checking the SCI contraband log, related six compact discs and one photo album were reported confiscated from plaintiff by Sgt. Hickman. It was noted on this contraband log that plaintiff's confiscated property items were removed from the SCI vault on March 7, 2006, and returned to plaintiff by Lt. Wilson. The items subject to confiscation, six compact discs and one photo album, are not listed on plaintiff's property inventory. Plaintiff contended seven compact discs, a television set, a set of headphones, a pair of Nike shoes, and a photo album containing family photographs were lost while under the control of SCI personnel. Consequently, plaintiff filed this complaint seeking to recover \$480.72, the estimated value of the alleged missing property items. The filing fee was paid.

{¶ 4} 4) Defendant denied any liability for any property loss plaintiff may have suffered. Defendant had no record of exercising control over plaintiff's Nike shoes and headphones. Defendant asserted plaintiff failed to produce sufficient evidence to establish SCI personnel were negligent in handling, securing, or storing his property. Additionally, defendant asserted the photographs confiscated from plaintiff were subsequently returned to him and the May 1, 2006, property inventory reflects this assertion. Defendant denied liability for the loss of the six confiscated compact discs based on the contention plaintiff failed to establish ownership of these items. Defendant also denied liability for the loss of the television set based on the same failure to provide proof of ownership argument.

{¶ 5} 5) Plaintiff, in his response to defendant's investigation report, related he was told by defendant's inspector that his television set had been secured in the SCI vault and would be forwarded to him. Plaintiff resubmitted a copy of a "Kite" (informal complaint

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dated April 30, 2006) to defendant's inspector addressing the issue of his stored property. On this Kite, defendant's inspector noted the following: "to prevent any damage your television is stored in the vault and will be there until you transfer or get out - Sgt. Borland has confirmed he has it." Defendant acknowledged securing a television set presumed owned by plaintiff. However, defendant related plaintiff failed to produce a title for this television set. Defendant speculated plaintiff perhaps, "could have sold his television for a debt and then later acquired one of lesser value that he had no title for, thus claiming he lost his title." Plaintiff explained the title to his television set was contained in the photo album he insists was never returned after being confiscated on March 3, 2006.

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{¶ 6} 6) In respect to his photo album claim, plaintiff asserted the forty-two photographs listed on his May 11, 2006, property inventory did not represent any photographs contained in his photo album confiscated on March 3, 2006. Photographs are listed on plaintiff's March 6, 2006, property inventory which was compiled at a time when plaintiff's photo album had previously been seized as contraband and therefore, already under defendant's control. Plaintiff maintained the photo album like the confiscated compact discs were never returned to his possession. Additionally, plaintiff submitted a copy of an inmate account withdrawal slip dated March 1, 2006, that establishes plaintiff authorized the withdrawal of \$61.75 from his account to be paid to Union Supply. Plaintiff contended this withdrawal slip constitutes evidence he ordered and authorized payment for a pair of Nike shoes. On March 9, 2006, the amount of \$61.75 was withdrawn from plaintiff's account and remitted to Union Supply. Nike shoes were not included in plaintiff's property when he was transferred to the Ross Correctional Institution.

CONCLUSIONS OF LAW

{¶ 7} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶ 8} 2) 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} 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.

{¶ 10} 4) Plaintiff's failure to prove delivery of one compact disc and a set of headphones to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 11} 5) 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.

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{¶ 12} 6) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus, 227 N.E. 2d 212. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 197 N.E. 2d 598. The court finds plaintiff's assertions persuasive in regard to the loss of six compact discs, a photo album, television set, and Nike shoes.

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

{¶ 14} 8) Plaintiff has failed to prove, by a preponderance of the evidence, additional losses 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, 577 N.E. 2d 160.

{¶ 16} 10) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 495 N.E. 2d 462. 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, 658 N.E. 2d 31.

{¶ 17} 11) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

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{¶ 18} 12) In a situation where 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, 518 N.E. 2d 46.

{¶ 19} 13) The court finds defendant liable to plaintiff in the amount of \$350.00, plus the \$25.00 filing fee.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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 \$375.00, 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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RDK/laa
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