

Court of Claims of Ohio

The Ohio Judicial Center
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LOWELL N. PAYNE, JR.

Case No. 2005-08387

Plaintiff

Judge J. Craig Wright

Magistrate Steven A. Larson

v.

MAGISTRATE DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

{¶1} Plaintiff brought this action against defendant alleging property loss. The case was tried to the court on the issues of liability, damages, and civil immunity.

{¶2} At all times relevant to this action plaintiff was an inmate in the custody and control of defendant at the Chillicothe Correctional Institution (CCI) pursuant to R.C. 5120.16. Plaintiff's claims arise out of the confiscation and subsequent destruction of his personal property; to wit, a typewriter and various typewriter accessories. Defendant argues that the property was contraband and that it was properly confiscated and destroyed pursuant to a valid order from the Ross County Court of Common Pleas.

{¶3} On April 12, 2005, plaintiff's typewriter was confiscated by Corrections Officer (CO) Gary McClaskey who issued plaintiff a Conduct Report for possession of contraband. (Plaintiff's Exhibit 7.) Sergeant Patrick DiSantis testified that on April 29, 2005, he presided over a hearing on the conduct report. Sergeant DiSantis determined that the typewriter was contraband because the silicone plugs used to cover the screws on the typewriter had been removed, indicating that it had been tampered with. After the hearing, Sergeant DiSantis completed an "Inmate Contraband Slip" wherein plaintiff was provided the option of either mailing the typewriter out of the institution at his own expense or having it destroyed. Plaintiff signed the slip. (Plaintiff's Exhibit 8, Page 3.)

{¶4} On August 8, 2005, Lieutenant Gloria Jacobs completed an incident report documenting the events that transpired after plaintiff was issued the conduct report.

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According to the report, on May 17, 2005, plaintiff reported to her to make arrangements to mail out his typewriter. After plaintiff stated that he was not certain that he wanted to mail the typewriter, Lieutenant Jacobs explained to him that he could either mail it or have it destroyed, but that the typewriter would not be returned to him. Plaintiff was ordered to report back in a few days with a final decision. On May 21, 2005, plaintiff told Jacobs to have the typewriter destroyed. (Plaintiff's Exhibit 7.)

{¶5} On June 6, 2005, a judge of the Ross County Court of Common Pleas approved an application of forfeiture authorizing defendant to destroy the typewriter. (Plaintiff's Exhibit 1.) According to her incident report, Lieutenant Jacobs destroyed plaintiff's typewriter on June 8, 2005, by placing it in the "hot trash" at CCI. (Plaintiff's Exhibit 7.)

{¶6} This court has consistently held that a correctional institution cannot be held liable for loss of contraband property that an inmate had no right to possess, and that an inmate is barred from recovering the value of confiscated property which was subsequently destroyed pursuant to a court order. See *Triplett v. Southern Ohio Corr. Facility*, Ct. of Cl. No. 2005-08701, 2006-Ohio-5673; *Beaverson v. Dept. of Rehab. and Corr.* (1988), 61 Ohio Misc.2d 249; *Dodds v. Dept. of Rehab. and Corr.* (2000), Ct. of Cl. No. 2000-03603; and *Sandoval v. Ohio State Penitentiary*, Ct. of Cl. No. 2004-05082, 2004-Ohio-5414.

{¶7} Based upon the evidence and testimony presented, the court finds that defendant acted pursuant to a valid court order, and with plaintiff's consent, when it destroyed his typewriter. Accordingly, plaintiff is barred from recovering damages from defendant for the destruction of his property.

{¶8} To the extent that plaintiff claims violations of his civil and constitutional rights in the disposition of his property, it is well-settled that such claims are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

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

{¶10} Additionally, to the extent that plaintiff seeks a determination as to the civil immunity of defendant's employees, the court finds that Timothy Brunsman, Gloria Jacobs, Patrick DiSantis, Kevin Scott, Charlie McKee, and Leta Pritchard were, at all times relevant hereto, acting within the scope of their employment or official responsibilities with defendant, and that they did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, it is recommended that the court issue a determination that Timothy Brunsman, Gloria Jacobs, Patrick DiSantis, Kevin Scott, Charlie McKee, and Leta Pritchard are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

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).

STEVEN A. LARSON
Magistrate

cc:

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Columbus, Ohio 43215-3130	Chillicothe, Ohio 45601
Magistrate Steven A. Larson	

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