

# 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

DAVID B. TYLER

Plaintiff

v.

OHIO DEPT. OF REHABILITATION  
AND CORRECTION

Defendant

Case No. 2006-06582-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} 1) On or about July 7, 2006, plaintiff, David B. Tyler, an inmate, transferred from defendant's Marion Correctional Institution ("MCI"), to defendant's Southern Ohio Correctional Facility ("SOCF"). Plaintiff's personal property items, including his television set, were also transferred from MCI to SOCF on July 7, 2006. Plaintiff related, "[m]y tv was damaged during transport due to negligence by staff resulting in severe pits and scratches to the glass picture tube impeding clear viewing." Furthermore, plaintiff asserted that when his television was processed at SOCF, an SOCF employee identified as Sgt. N. Miller damaged the set. Plaintiff stated, "Sgt. N. Miller damaged the plastic housing prior to slathering [a] pint [of] paint all over the exterior of said housing and pouring same paint over and down the glass picture tube so that it went behind the plastic housing and onto the internal circuit board rendering certain tv control functions defective (e.g. volume control buttons)."

{¶2} 2) Additionally, plaintiff claimed his two bowls, two particle boards, and plastic spoon were confiscated by Sgt. Miller on July 7, 2006, and not returned.

{¶3} 3) On or about July 14, 2006, plaintiff was transferred from SOCF to defendant's Toledo Correctional Institution ("ToCI"). Plaintiff asserted his over the

counter medicines that he had previously purchased were confiscated by ToCI staff. Plaintiff related the confiscated medicines which included eye drops, laxative pills, milk of magnesia, hydrocortisone cream, acne cream, and hemorrhoidal ointment were never returned to his possession.

{¶4} 4) Consequently, plaintiff filed this complaint seeking to recover \$113.94, the estimated value of his alleged damaged television set, plus \$42.75, the estimated replacement cost of his alleged confiscated property items. Plaintiff submitted the \$25.00 filing fee cost and requested reimbursement of that amount along with his total damage claim of \$156.69. Plaintiff also requested \$10.00 for postage. Postage costs are not recoverable and the request for reimbursement is denied. The matter of postage shall not be further addressed. Plaintiff's total claim amounts to \$156.69, plus \$25.00 for filing fee reimbursement. Plaintiff submitted an invoice document showing he purchased a Zenith television set for \$113.94 on December 16, 2004. Plaintiff submitted multiple commissary receipts from MCI showing he purchased laxatives and eye drops on multiple occasions in May and June, 2006. Plaintiff submitted a copy of his property inventory dated July 6, 2006, and compiled by MCI employee, Sgt. Turner. Among the items listed are milk of magnesia and one bowl. Plaintiff submitted a copy of his property inventory dated July 7, 2006, and compiled at SOCF. Among the items listed on this inventory are one acne gel and two bowls.

{¶5} 5) Defendant denied plaintiff's television set was damaged by any personnel at either MCI or SOCF. In fact defendant maintained the television set, "is not damaged and functions as intended." Defendant submitted photographs of plaintiff's television set. These photographs do not depict any visible damage to the glass picture tube of the set. Furthermore, defendant specifically denied the television set was excessively painted. Defendant explained the television set, "was plugged in and tested," by ToCI staff in July, 2006, and the set, "was not malfunctioning in any way." The television set was titled and issued to plaintiff.

{¶6} 6) Defendant also denied any liability in regard to the loss of any alleged

confiscated property items. Defendant noted the property in question was either sent home at plaintiff's request or not owned by plaintiff. Defendant suggested the medicinal items claimed were probably used by plaintiff before he arrived at ToCI. Defendant submitted a document titled "Long Term Storage/Contraband" dated July 7, 2006, recording SOCF employees seized eye drops, one spoon, and one milk of magnesia from plaintiff. There is no evidence defendant returned these items. Defendant submitted another document dated August 23, 2006, in which plaintiff authorized ToCI staff to send listed property items home. Also recorded on this document under the hand written note, "Property Destroyed - 2 Bowls." It does not appear plaintiff authorized ToCI staff to destroy his bowls considering the August 23, 2006, document contains a heading with a blank box, "Destroy at my request." The "Destroy at my request" box is unchecked. There is no record of any institutional personnel receiving delivery of particle boards, hemorrhoid ointment, hydrocortisone cream, and laxative pills. Acne gel is listed on plaintiff's July 7, 2006, property inventory compiled at SOCF. It does not appear the acne gel was forwarded to ToCI later in July, 2006.

{¶7} 7) Plaintiff filed a response disputing defendant's assertions regarding his television set. Plaintiff insisted the set is not functioning and was damaged in transport. Plaintiff claimed the television set malfunctioned when inspected by defendant's inspector.

{¶8} 8) Plaintiff asserted his bowls and spoon were destroyed without his knowledge or authorization by defendant's employees. Plaintiff has apparently withdrawn his complaint for the loss of two particle boards.

{¶9} 9) Plaintiff again asserted his over the counter medicine items were confiscated by ToCI personnel. Plaintiff again contended none of the items were returned to him.

#### CONCLUSIONS OF LAW

{¶10} 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.

{¶11} 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.

{¶12} 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.

{¶13} 4) Plaintiff’s failure to prove delivery of two particle boards, hydrocortisone cream, laxative pills, and hemorrhoidal ointment 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. Plaintiff’s claim for these items is denied.

{¶14} 5) Plaintiff has failed to show any causal connection between any damage to his television set and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2003-04236-AD, 2003-Ohio-3615. Plaintiff has failed to produce any evidence to establish his television set was damaged while under defendant’s control. Plaintiff has failed to prove his television set was damaged by any negligent act of defendant’s personnel.

{¶15} 6) 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. Sufficient evidence has been produced to show plaintiff’s two bowls were destroyed without proper authorization.

{¶16} 7) Additionally, evidence has shown plaintiff’s spoon, acne cream, eye drops, and milk of magnesia were lost while under the custody of defendant’s

employees. In regard to these items negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD, jud.

{¶17} 8) 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.

{¶18} 9) Defendant is liable to plaintiff for property loss in the amount of \$21.12, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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MEMORANDUM DECISION

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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 \$46.12, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

David B. Tyler, #A438-054

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