

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

KUSHAWN BARNES

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL
FACILITY

Defendant

Case No. 2007-01177-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, KuShawn Barns, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), stated he was transferred from the SOCF J-1 segregation unit to the J-2 segregation unit on July 7, 2006. Additionally, plaintiff explained that while he was assigned to the segregation units he was held on “close watch” status for a period of several months. Inmates held in “close watch” are restricted in the amount and type of property they are permitted to possess. For example, plaintiff claimed he was not allowed to receive incoming mail during the time he was held in “close watch.” according to plaintiff, his mail along with other property items were placed in storage in a closet in the J-1 segregation unit.

{¶2} 2) Plaintiff related that when he was transferred back to the SOCF J-1 segregation unit on July 11, 2006, he was informed all his mail and other papers containing addresses and telephone numbers had been destroyed while he was housed in the J-2 segregation unit. Plaintiff contended defendant should bear liability for the loss of his property which he described as “mail from my family and friends (who were paying for my lawyers and sending me money on a regular basis) with phone numbers and addresses.” Plaintiff filed this complaint seeking to recover \$66.80, for the loss of

personal information, plus \$2,148.20 for the loss of legal mail. Plaintiff was not required to pay a filing fee to pursue this action.

{¶3} 3) Plaintiff submitted a copy of a grievance he filed with defendant's Deputy Chief Inspector, L.C. Coval. In this grievance Coval agreed with the findings of the SOCF Institutional Inspector, who determined plaintiff's mail was lost and SOCF should bear responsibility for the loss of the incoming mail.

{¶4} 4) Defendant denied any liability in this matter. Defendant acknowledged plaintiff was held on "close watch" status, but denied he did not have any access to his mail. Defendant explained inmates on "close watch" are permitted to read their mail, but not permitted to retain possession. Once read, the mail is placed in a locked closet in the particular cellblock. Defendant maintained plaintiff's mail was secured in a locked closet in the J-1 cellblock.

{¶5} 5) Defendant admitted plaintiff complained about lost mail and upon investigating the complaint no mail was found. Defendant is unaware of the disposition of plaintiff's mail. However, defendant asserted not all of plaintiff's mail was misplaced since some mail items were discovered among plaintiff's stored property. Defendant stated, SOCF staff "cannot ascertain that any particular pieces of mail were lost or not." Additionally, defendant denied SOCF actions limited plaintiff's ability to receive money from his family and friends or limited his ability to engage legal counsel as plaintiff specifically cited in his complaint. Defendant observed plaintiff did receive money from family members after his mail was lost between July 7, 2006 and July 11, 2006.

{¶6} 6) Defendant submitted a copy of a "Theft/Loss Report" dated July 27, 2006, regarding an investigation into plaintiff's complaint about lost mail. From this report plaintiff complained on July 12, 2006 about four pieces of legal mail and four personal letters being lost while under the custody of SOCF staff between July 7, 2006, and July 11, 2006. A search was conducted for the eight pieces of mail. However, SOCF personnel failed to find any of the claimed lost documents. Defendant submitted additional documents establishing plaintiff's eight pieces of mail could not be located

and consequently were not recovered.

{¶7} 7) After examining all documentation in the claim file, the trier of fact finds plaintiff's complaint is based on the loss of eight pieces of mail. The lost mail items were described as one large legal envelope and two regular size envelopes from the National Legal Professional Associates, one letter from the Parole Board, and four letters from plaintiff's personal friends. Plaintiff's action is limited to the value of the eight described items.

CONCLUSIONS OF LAW

{¶8} 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.

{¶9} 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.

{¶10} 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.

{¶11} 4) 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.

{¶12} 5) Plaintiff's failure to prove delivery of certain items of property 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.

{¶13} 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, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. 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, 26 O.O. 2d 366, 197 N.E. 2d 598. The court finds plaintiff's assertions persuasive in regard to the loss of eight pieces of mail.

{¶14} 7) Negligence on the part of defendant has been shown in respect to the loss of eight pieces of mail. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶15} 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.

{¶16} 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.

{¶17} 10) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 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.

{¶18} 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, 664 N.E. 2d 750.

{¶19} 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.

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{¶20} 13) The court finds defendant liable to plaintiff in the amount of \$25.00.



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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 \$25.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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