

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

EYEN CARNAIL, SR.

Case No. 2007-06322-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

FINDINGS OF FACT

{¶1} 1) On January 12, 2007, plaintiff, Eyen Carnail, Sr., an inmate incarcerated at defendant's Richland Correctional Institution ("RiCI"), was transferred from the institution's general population to a segregation unit.

{¶2} 2) Incident to this transfer, plaintiff's personal property was inventoried, packed and delivered into the custody of RiCI staff.

{¶3} 3) Plaintiff asserted that when he subsequently regained possession of his property he discovered several items were missing, including a Sony Walkman, two cassette tapes, two mirrors, one blue net bag, and multiple food items. The alleged missing food items included four summer sausages, three pepperoni sticks, two fish filets, four bags of chips, eleven bags of noodles, two bacon, one brown rice, and three hot chilies. Plaintiff contended his property was lost or stolen while under defendant's control and he has filed this complaint seeking to recover \$86.46, the estimated value of the items claimed. Plaintiff also requested \$2.50 for copying costs. Copying costs are not compensable in a claim of this type and consequently, the request for this expense is denied. The matter will not be further addressed. Plaintiff was not required to pay the filing fee.

{¶4} 4) Defendant filed an investigation report admitting liability for the loss of

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plaintiff's Sony Walkman and "verifiable commissary purchases." Defendant contended damages for these items should be limited to \$44.73. Defendant specifically denied liability for the loss of cassette tapes, mirrors and a net bag. Defendant related plaintiff has not proven he actually owned cassette tapes, mirrors, and a net bag. Additionally, defendant contended plaintiff failed to prove he owned all commissary items claimed. Defendant's records show plaintiff purchased all the claimed food products from the RiCI commissary on December 29, 2006. Plaintiff was transferred to segregation two weeks later on January 12, 2007. Defendant has no record of plaintiff ever receiving any cassette tapes through approved means. Defendant pointed out the net bag claimed by plaintiff may have been "confiscated as contraband." The mirrors plaintiff claimed were packed on January 12, 2007, at least according to one property inventory compiled on this date (three inventories of plaintiff's property were compiled on January 12, 2007). One of the January 12, 2007 inventories lists a net bag as contraband. Another inventory lists "no contraband."

{¶15} 5) Plaintiff filed a response insisting he purchased the Sony Walkman and cassette tapes when he was incarcerated at the Mansfield Correctional Institution ("ManCI"). Plaintiff transferred from ManCI to RiCI in September, 2006. Plaintiff insisted he owned the net bag, mirrors, and all commissary items claimed. Plaintiff submitted a price list showing the replacement cost of a Sony Walkman is \$38.70. Defendant admitted liability in the amount of \$19.55 for the Sony Walkman.

CONCLUSIONS OF LAW

{¶16} 1) 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.

{¶17} 2) 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.

{¶18} 3) Plaintiff must produce evidence which affords a reasonable basis for

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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.

{¶9} 4) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶10} 5) The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the confiscated property was not owned by plaintiff. Therefore, plaintiff may not recover damages associated with the loss of property he did not own. See *Mumm v. Ohio Dept. of Rehab. and Corr., et al.*, Ct. of Cl. No. 2004-04574-AD, 2004-Ohio-5134.

{¶11} 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 548. The trier of fact finds plaintiff's statements persuasive concerning the ownership of all property claimed.

{¶12} 7) Negligence on the part of defendant has been shown in respect to all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶13} 8) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. The court finds defendant liable to plaintiff in the amount of \$86.46.

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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 \$86.46. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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