

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

MICHAEL B. WILLIAMS

Plaintiff

v.

BUREAU OF MOTOR VEHICLES

Defendant

Case No. 2008-01952-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On January 20, 2008, plaintiff, Michael B. Williams, was arrested incident to a traffic stop by a police officer from the City of Solon Police Department. Among other offenses, plaintiff was charged with driving under a suspended license. Along with being subject to arrest and detainment, plaintiff's vehicle was impounded based on the driving under suspension charge. Plaintiff asserted he was arrested and his vehicle was impounded as a proximate cause of an act on the part of defendant, Bureau of Motor Vehicles ("BMV"), in erroneously recording his driver's license status as suspended. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$1,822.88 based on defendant's improper and erroneous record keeping. Plaintiff, a student attending Bowling Green State University, itemized his damage claim as follows:

\$600.00	for missed classes on Wednesday January 23, 2008
\$ 91.81	for gas or mileage expenses for a round trip from Bowling Green to Bedford and back for a January 23, 2008 court appearance
\$126.07	for towing fees
\$125.00	for bail expense
\$ 80.00	for court costs levied by the Bedford Municipal Court
\$400.00	for humiliation and embarrassment upon being arrested
\$200.00	for "anxiety" and emotional distress brought on by defendant's

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negligent act
\$200.00 for "total time spent"
\$1,822.88 total damage claim

{¶ 2} Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that amount in addition to his damage claim.

{¶ 3} Although admitting error in recording plaintiff's license was under suspension, defendant has admitting liability for some, but not all expenses claimed by plaintiff. Defendant acknowledged plaintiff is entitled to recover \$125.00 bail bond expense, the \$126.07 towing fee, \$80.00 in court costs, and \$25.00 for filing fee reimbursement. Defendant denied liability for any additional claims for missed classes, "total time spent," anxiety, emotion distress and embarrassment/humiliation, which BMV characterized as "unsubstantiated claims." Defendant asserted plaintiff's recovery should be limited to \$356.074. Defendant did not address plaintiff's claim for gas/mileage expenses to travel from Bowling Green to Bedford and back for a court appearance.

{¶ 4} Plaintiff filed a response maintaining he should receive total reimbursement in the amount requested in his complaint. Plaintiff did not offer evidence other than his own contention to establish his "missed classes" had totaled \$600.00 in

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tuition payments. Plaintiff did not offer any authority to show he is entitled to damages for the negligent infliction of emotional distress (anxiety) in a claim of this type that did not involve actual physical injury or the threat of physical injury. Plaintiff did not prove his entitlement to recover damages for “total time spent,” which the court construes as a damage claim analogous to work loss.

{¶ 5} Resulting damages may be recovered when a plaintiff proves, by a preponderance of the evidence, his driver’s license was erroneously listed as suspended by defendant. *Ankney v. Bureau of Motor Vehicles* (1998), 97-11045-AD; *Serbanescu v. Bureau of Motor Vehicles* (1994), 93-15038-AD; *Black v. Bureau of Motor Vehicles* (1996), 95-01441-AD. These damages must directly flow from defendant’s failure to convey accurate information. *Henighan v. Ohio Dept. of Public Safety* (1997), 97-01619-AD; *Jordan v. Bureau of Motor Vehicles* (1998), 97-10341-AD.

{¶ 6} Plaintiff has proven, by a preponderance of the evidence, that his driver’s license was improperly listed as suspended by defendant. *McGee v. Ohio Bureau of Motor Vehicles* (1997), 97-03999-AD. Defendant is liable to plaintiff for damages plaintiff can prove resulted from defendant’s failure to keep proper accurate records. *Partlow v. Bureau of Motor Vehicles* (1997), 97-07820-AD. In the instant claim, plaintiff has failed to prove he is entitled to recover damages for “total time spent.” Also,

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plaintiff's cause of action based on the negligent infliction of emotional distress (anxiety) is not compensable under the particular facts of this claim since plaintiff did not demonstrate that he "either witnessed or experienced a dangerous accident or appreciated actual physical peril." *Heiner v. Moretuzzo*, 73 Ohio St. 3d 80, 86-87, 1995-Ohio-65, 652 N.E. 2d 664. Generally, recovery for negligent infliction of emotional distress in the absence of contemporaneous physical injury is limited to such instances where a plaintiff was either a bystander to an accident or was in fear of physical consequences and suffered proven severe emotional distress. *Paugh v. Hanks* (1983), 6 Ohio St. 3d 72, 6 OBR 114, 451 N.E. 2d 759; *Dobran v. Franciscan Med. Ctr.*, 102 Ohio St. 3d 54, 2004-Ohio-1883, 806 N.E. 2d 537.

{¶ 7} Embarrassment and humiliation over being arrested are recognized as elements of damages and, thus, compensable by this court. *Ankney; Hodge v. Ohio Bureau of Motor Vehicles* (1999), 99-08475-AD; *Goldsmith v. Bureau of Motor Vehicles* (2000), 99-13444-AD; *Snedeker v. Ohio Bureau of Motor Vehicles* (2000), 2000-08133-AD; *Miller v. Ohio Bureau of Motor Vehicles* (2001), 2001-09427-AD; *Bumphus v. Bureau of Motor Vehicles*, Ct. of Cl. No. 2004-01117-AD, 2004-Ohio-4589. Plaintiff may recover damages based on embarrassment/humiliation.

{¶ 8} Defendant is liable to plaintiff for damages plaintiff can prove resulted from

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defendant's failure to provide correct information. *Rivers v. Bureau of Motor Vehicles*, Ct. of Cl. No. 2005-06872-AD, 2005-Ohio-7089. Evidence has shown plaintiff is entitled to recover either gasoline expenses or mileage expenses related to his court appearance. Plaintiff has chosen to pursue a claim for gasoline costs. Additionally, the court finds plaintiff is permitted to recover the cost of tuition payment based on the class time he missed proximately caused by defendant's erroneous record keeping. 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. The court in the instant claim finds defendant liable to plaintiff for bail, towing, court costs, gas, missed classes, and embarrassment. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148, 611 N.E. 2d 492. Only 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. The court finds defendant liable to plaintiff for damages in the amount of \$1,000.00, 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*

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Correction (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 \$1,025.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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[Cite as *Williams v. Bur. of Motor Vehicles*, 2008-Ohio-4625.]

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