

# 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

RAYSHON WATLEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION  
AND CORRECTION

Defendant

Case No. 2007-05270-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶ 1} 1) On or about August 16, 2006, plaintiff, Rayshon Watley, an inmate incarcerated at defendant's Southern Ohio Correctional Facility ("SOCF"), was transferred from the SOCF general population to a local control unit. Plaintiff's personal property was inventoried, packed, and stored in the SOCF property vault incident to his transfer to local control. Plaintiff related he was housed in the SOCF local control unit for six months and then transferred to the Ohio State Penitentiary ("OSP").

{¶ 2} 2) Plaintiff alleged that his property which had been stored at SOCF was never forwarded to OSP when he was transferred there. Plaintiff asserted the following items were never returned to his possession: one shampoo, three bars of soap, two lotion, three hair grease, two deodorants, three cassette tapes, four bottles of Muslin oil, one thermal underwear top, one pair of black shoes, one pair of shower shoes, one undershirt, two bowls, one cough drop, two pepperoni packs, one chicken, one Vienna sausage, two cheese, one powder, one bottle of vitamins, one lip balm, one mayonnaise, twelve seafoods, one peanut butter, one cookie, one bag of candy, and four tubes of toothpaste. Plaintiff filed this complaint seeking to recover the value of his alleged missing property that he claims was lost or stolen while under the control of SOCF staff. Payment of the filing fee was waived.

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{¶ 3} 3) Plaintiff submitted a copy of his property inventory compiled by SOCF personnel on August 16, 2006. All property items claimed with the exception of chicken were listed as packed by an SOCF employee. It should be noted the thermal underwear top is listed as “State Issue” property.

{¶ 4} 4) Defendant filed an investigation report admitting liability for the loss of plaintiff’s cassette tapes, Muslin oil, and one pair of black house shoes. Defendant estimated these items were worth \$25.00 total. Defendant explained plaintiff was permitted to possess and did receive certain property items while he was assigned to local control at SOCF. Defendant provided a document showing SOCF staff delivered one shampoo, one bar of soap, one deodorant, one pair of shower shoes, and undershirts to plaintiff while he was housed in the SOCF local control unit. Defendant acknowledged no food items were returned to plaintiff and suggested, “[t]hey may have been discarded after 6 months of storage as unsafe for consumption.” None of the food items were packed when plaintiff was transferred from SOCF to OSP. An inventory of plaintiff’s property (copy submitted) compiled on February 28, 2007 incident to his transfer to OSP, does not list any food items. Defendant asserted the bowls, vitamins, and remaining hygiene items plaintiff claimed were inventoried on February 28, 2007 and subsequently returned to plaintiff when he was transferred to OSP. Of the claimed

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missing items, the February 28, 2007 inventory lists two bowls, vitamins, three tubes of toothpaste, four bars of soap, three hair grease, deodorant, lotion, and shower shoes. Although admitting liability for the loss of cassette tapes, Muslin oil, and house shoes, defendant contended plaintiff “failed to sustain his burden of proof either as to liability or as to damages.” Defendant stated, “[t]he defendant denies any liability for the claimed loss.”

{¶ 5} 5) Plaintiff filed a response arguing defendant had no right or authority to discard his food items. Also, plaintiff reasoned that since defendant admitted liability for the loss of his cassette tapes, Muslin oil, and house shoes, then defendant should bear liability for all items packed at SOCF. Plaintiff explained the property listed on his February 28, 2007 inventory reflected items he had purchased after August 16, 2006 when his property was packed and stored in the SOCF property vault incident to his transfer to a local control unit. Plaintiff asserted the property listed on the August 16, 2006 inventory is completely separate from the property listed on the February 28, 2007 inventory. According to plaintiff, no property listed on the February 28, 2007 inventory included items packed and listed on the August 16, 2006 inventory. Plaintiff did not file any commissary receipts for any purchases he made at the SOCF commissary during the period from August 16, 2006 to February 28, 2007.

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### CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 4) Plaintiff’s failure to prove delivery of chicken 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.

{¶ 10} 5) 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),

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85-01546-AD.

{¶ 11} 6) This court has previously held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Consequently, plaintiff's claim for the loss of state issued property items such as thermal underwear is denied since he has failed to offer sufficient proof to show he owned the property. See *Sanford v. Ross Correctional Inst.*, Ct. of Cl. No. 2006-03494-AD, 2006-Ohio-7311.

{¶ 12} 7) 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 court does not find plaintiff's assertions regarding the loss of hygiene items to be particularly persuasive.

{¶ 13} 8) Plaintiff has failed to prove, by a preponderance of the evidence, defendant lost and failed to return his hygiene items claimed, two bowls, vitamins, shower shoes, and a personal undershirt. Plaintiff has failed to prove, by a preponderance of the evidence, any of the above mentioned property was lost as a

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proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 14} 9) It has been previously held an inmate plaintiff may recover the value of property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destructions. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD; *Wooden v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004-01958-AD, 2004-Ohio-4820; *Hemsley v. N. Cent. Correctional Inst.*, Ct. of Cl. No. 2005-03946-AD, 2005-Ohio-4613; *Mayfield v. Richland Correctional Inst.*, Ct. of Cl. No. 2005-07976-AD, 2006-Ohio-358.

{¶ 15} 10) Evidence has shown defendant did not obtain proper authority to discard plaintiff's food items. *Brunner v. Southern Ohio Correctional Facility*, Ct. of Cl. No. 2006-08020-AD, 2007-Ohio-6386.

{¶ 16} 11) Negligence on the part of defendant has been shown in respect to plaintiff's food items, Muslim oil, house shoes, and cassette tapes. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 17} 12) 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.

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{¶ 18} 13) 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.

{¶ 19} 14) The standard measure of damages for personal property is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.*(1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750. Plaintiff has suffered damages in the amount of \$55.00.

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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 \$55.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
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