

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

ABDUL-HAKIYM ZAKIY

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2007-08741-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On October 20, 2006, plaintiff, Abdul-Hakiym Zakiy, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), was issued a title (dated October 18, 2006) for a Clear Tunes radio/cassette player, purchased from Union Supply Company, an OSP approved vendor. Plaintiff explained the Clear Tunes radio/cassette player “was defective” and he therefore delivered the device to OSP employee, Sgt. Curtis Tanner, to be mailed back to Union Supply Company in exchange for a working replacement. Plaintiff recalled he delivered the radio/cassette player to Sgt. Tanner in late October 2006 for mailing back to the vendor, Union Supply Company. Plaintiff asserted the radio/cassette player was placed on a shelf instead of being promptly mailed back to the vendor. Plaintiff maintained he subsequently received a request “[i]n late December some two months later (from OSP) property room staff” for a cash slip authorization to mail the radio/cassette player back to the vendor. According to plaintiff, the radio/cassette player was under a vendor issued 30 day warranty for replacement

and by December 2006, this replacement warranty had expired.

{¶ 2} Plaintiff contended he was prevented from receiving a replacement radio/cassette player as a sole result of negligence on the part of OSP personnel in failing to timely mail the electronic device back to the vendor before the replacement warranty had expired. Plaintiff filed this complaint seeking to recover damages for property loss in the amount of \$53.95, the total replacement cost of a new Clear Tunes radio/cassette player. Plaintiff also requested damages of \$16.99, the cost of a Sentry TR 792 Clear radio/cassette player he purchased to replace the defective Clear Tunes radio/cassette player. Additionally, plaintiff seeks damages in this matter in the amount of \$2,429.06 for “negligence claims.” The filing fee was paid. The court finds plaintiff’s damage claim is limited to \$53.95, the total replacement cost of a new Clear Tunes radio/cassette player. Plaintiff’s property loss damage claim is set at \$53.95.

{¶ 3} On February 1, 2007, plaintiff filed a grievance (copy submitted) with defendant concerning the loss of his radio/cassette player. In the grievance plaintiff explained he received the radio/cassette player on October 20, 2006 and discovered the device was defective on that same day. Plaintiff pointed out he notified OSP Unit Staff of the problem with his radio/cassette player on October 23, 2006 and by October 25, 2006 he delivered the device to OSP Unit Manager Johnson with a request to send the defective radio/cassette player back to the vendor in return for a replacement. Plaintiff recalled the OSP Unit Manager Johnson informed him that the radio/cassette player had been engraved and vendors such as Union Supply Company did not accept engraved items for return and replacement. Plaintiff related other OSP personnel informed him that engraved items were accepted by vendors so he then delivered the radio/cassette player to OSP employee, Sgt. Tanner requesting he send the device back to the vendor. Plaintiff wrote “[a] few days later he (Sgt. Tanner) told me that the (radio/cassette player) had been sent back.” Plaintiff noted he made attempts in November 2006 to contact the vendor and inquire about a replacement radio/cassette player. According to plaintiff, he was asked in late December 2006 by OSP personnel for a cash slip to authorize the mailing of the radio/cassette player that he though had already been sent back to the vendor.

{¶ 4} Defendant acknowledged there was a delay in mailing plaintiff’s radio/cassette player back to the vendor. Defendant stated the “delay occurred, in part,

due to [p]laintiff's failure to properly complete a cash slip for mailing." Defendant asserted when plaintiff was informed his radio/cassette player was not mailed "due to a defective cash slip" he did not try to submit a new cash slip, but instead requested the radio/cassette player be returned to his possession. Defendant related plaintiff "declined the offer of the Office of the Inspector of Institution Services to make an attempt to contact the vendor and resolve the situation." Defendant contended the sole reason the radio/cassette player was not returned to the vendor within the optimum time frame was due to plaintiffs' negligent failure to properly complete a mailing authorization cash slip. Defendant did not submit a copy of the "defective cash slip."

{¶ 5} Plaintiff filed a response specifically denying he submitted a "defective cash slip" and that he was timely (October or November 2006) informed by OSP property room staff that he had submitted a "defective cash slip." Furthermore, plaintiff asserted he did seek assistance from defendant's Office of the Inspector of Institutional Services, but did not obtain the resolution to the matter he desired. Plaintiff explained when he forwarded his radio/cassette player to Sgt. Tanner in October 2006, "Sgt. Tanner was supposed to call the Union Supply Company and obtain a R/A number which would allow the defective walkman to be sent back to the company free of charge." Plaintiff noted this return procedure is outlined on the order information page (copy submitted) from the vendor, Union Supply Company. Printed information on returned merchandise from the order information page provides:

{¶ 6} "RETURNS: All returns that are received defective or damaged in transit and are not engraved, Please write or call 888-308-6466 to obtain an R/A # number. All returns must be made within 30 days and must be accompanied by an R/A number. Union Supply is not responsible for refused items. Please ensure that the items you order are approved at your facility.

{¶ 7} "PRODUCT RETURNS: Used items, abused items or damaged items cannot be returned, exchanged or refunded. All items are only covered by the manufacturer's warranties. Please check all of your items upon receipt. If any of these items are found to be defective or damaged in shipping, you must return these goods within 30 days. All original boxes and packing materials are required on any returned goods. These goods will be repaired or replaced at no cost to you. Returned items that are older than 30 days will not be processed, only returned to you. All merchandise that

was ordered in error, for any reason, can be exchanged for \$3.95. All Exchanges must be done within 30 days of purchase. Merchandise must be unused and in original packaging.”

{¶ 8} Defendant related the “defective cash slip” is not in the possession of any OSP personnel since it was returned to plaintiff at some unspecified date. Defendant further related OSP employee Sgt. M. Lashley was contacted on March 26, 2008, regarding the location of the “defective cash slip” and “Sgt. M. Lashley advised this office that there is no copy of said cash slip as it was returned to the inmate when it was discovered to have been completed wrong.” Defendant reported no cash slip was processed, therefore no copy was retained.

CONCLUSIONS OF LAW

{¶ 9} In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant’s breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 10} “Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court. . .” *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d 744, 2003-Ohio-5333, 798 N.E. 2d 1121, at ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; and *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265. In the instant claim, plaintiff has offered sufficient evidence to establish defendant negligently failed to timely return his broken radio/cassette player under warrant guidelines and consequently, plaintiff suffered property loss as a result of this negligence.

{¶ 11} 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 defendant’s assertions regarding a “defective cash slip” to be particularly persuasive. Conversely, the court finds plaintiff’s assertions regarding the facts of this claim to be persuasive.



{¶ 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.

{¶ 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.

{¶ 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.

{¶ 15} Plaintiff suffered damages in the amount of \$53.95, plus he \$25.00 filing fee which may be awarded as compensable damages pursuant to R.C. 2335.19. *Bailey v. Ohio Department of Rehabilitation and 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 \$78.95, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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