

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

STEVEN D. PIERCE

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORR.

Defendant

Case No. 2008-05621-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Steven D. Pierce, an inmate incarcerated at defendant's Chillicothe Correctional Institution ("CCI"), filed this complaint alleging his watch was damaged while under the control of CCI staff. Plaintiff seeks damages in the amount of \$75.00, the maximum value limitation for a watch set by defendant's internal policy. Payment of the \$25.00 filing fee was waived.

{¶ 2} 2) Defendant filed an investigation report admitting liability for damaging plaintiff's watch, but disputing the amount of plaintiff's damage claim. Defendant explained plaintiff received the watch in 1990 from his family and it was damaged on September 26, 2007. Defendant contended the proper measure of damages for personal property such as a watch is the market value of that particular property item at the time it was destroyed. Defendant maintained a watch would have depreciated in value over a seventeen year period and would therefore, be worth no more than \$25.00 by September 26, 2007. Defendant related plaintiff's watch had a fair market value of \$25.00 taking into consideration "new watches available for purchase by inmates . . .

range in price from \$4.61 and \$40.62.”

{¶ 3} 3) Plaintiff filed a response pointing out he received the watch from his mother in 1990 and the property item was worth more than \$75.00 based on sentimental value. Plaintiff stated he could not replace the destroyed watch with another watch of the same type for \$25.00. Plaintiff requested additional damages in the amount of \$300.00 “for sentimental value, because it (the watch) came from my mother and was the last thing I ever received from her, before she passed, and watch cannot be replaced.”

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 4) Negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD; jud.

{¶ 8} 5) 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.

{¶ 9} 6) The standard measure of damages for personal property loss is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E 2d 750.

{¶ 10} 7) In a situation where a 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.

{¶ 11} 8) Notwithstanding the fact defendant has instituted value restrictions for property possessed by inmates, an inmate plaintiff may recover the market value of property damaged through the negligence of defendant if the value can be established within a reasonable degree of certainty. *Gaiter v. Lima Correctional Facility* (1998), 61 Ohio Misc. 2d 293, 578 N.E. 2d 895. A plaintiff is competent to testify in respect to the true value of his property. *Gaiter*.

{¶ 12} 9) The court finds defendant liable to plaintiff in the amount of \$50.00.

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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 \$50.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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