

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

PHILLIP K. CORDELL

Plaintiff

v.

MADISON CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-05516-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Phillip K. Cordell, an inmate formerly incarcerated at defendant, Madison Correctional Institution (“MaCI”), filed this action alleging his Sony CD player, headphones, four CDS, toothpaste, and deodorant were lost or stolen while under the control of MaCI staff. Plaintiff explained he was transferred to the CMC Medical Center on November 30, 2007 and his personal property was packed and delivered to defendant incident to the transfer. On or about December 6, 2007, plaintiff returned to MaCI and when he regained possession of his property he discovered his CD player, headphones, four CDS, toothpaste, and deodorant were missing. Plaintiff immediately reported the theft/loss of his property and defendant recovered his CD player which was found in the possession of another inmate. Defendant attempted to return the recovered CD player, but plaintiff refused to accept it claiming the device was damaged beyond repair. The CD player remains stored in defendant’s custody. Plaintiff seeks recovery of damages in the amount of \$81.95 for his CD player, \$31.95 for his headphones, \$102.30 for four CDS, and \$5.00 for toothpaste and deodorant.

Payment of the filing fee was waived.

{¶ 2} 2) Plaintiff submitted a copy of his property inventory record compiled on November 30, 2007 before his transfer. The inventory lists one CD player, one set of headphones, ten CDS, two tubes of toothpaste, and deodorant. Plaintiff submitted a copy of an invoice showing he purchased a Sony CD player on October 20, 2006 for \$76.85. Plaintiff also submitted copies of various “Check Out-Slips” authorizing withdrawals from his inmate account to pay for mail order purchases. “Check Out-Slips” submitted showed withdrawals for purchases were made on October 12, 2007 in the amount of \$162.91, September 28, 2007 in the amount of \$103.97, and February 22, 2006 in the amount of \$98.84.

{¶ 3} 3) Defendant acknowledged plaintiff’s CD player was found in the possession of another inmate and plaintiff refused to accept the recovered device claiming it had been damaged. Defendant maintained the CD player was not damaged, was tested, and found “to be in a workable condition.” Defendant asserted “[t]he claim for the CD player should not be allowed.” Defendant submitted photographs of plaintiff’s CD player. The photographs do not depict any physical damage to the CD player. Defendant stated “the only marking that could be seen were superficial scratches on the cover” of the CD player. 4) Defendant denied any liability for the loss of four CDS, toothpaste, and deodorant. Defendant acknowledged ten CDS, two tubes of toothpaste, and deodorant were packed and delivered to MaCI staff on November 30, 2007. Defendant explained plaintiff “was offered a settlement for release of claim on his property for \$49.01 for 3 CDS, 1 toothpaste, and 1 deodorant; however inmate Cordell declined this settlement.” Due to the fact plaintiff declined the offer to settle his claim for the loss of CDS, toothpaste, and deodorant, defendant has contended “the claims for these items should not be allowed.” Apparently defendant has withdrawn any offer of settlement and has instead disputed liability for the loss of any CDS, toothpaste, and deodorant. Defendant pointed out the particular CDS plaintiff claimed include: 1) Renee & Angela, purchased October 2007 for \$16.99, 2) Tesla, purchased June 2006 for \$13.99, 3) Alice in Chains, purchased October 2007 for \$13.99, and 4) George Strait, no purchase or order record. Defendant related that plaintiff “has received numerous CDS as well as mailed out numerous CDS” during the time he has been incarcerated at MaCI. Defendant submitted records showing plaintiff

mailed a total of twenty-six CDS from MaCI prior to November 30, 2007. Defendant submitted records showing plaintiff purchased and received thirty-six CDS prior to November 30, 2007 (time frame encompassing May 25, 2006 to October 30, 2007). Defendant submitted copies of plaintiff's property inventories compiled on November 30, 2007 and January 23, 2008. The November 30, 2007 inventory lists ten CDS, two tubes of toothpaste, and deodorant. The January 23, 2008 inventory lists no CDS, two tubes of toothpaste, and three deodorants. Defendant contended plaintiff failed to prove, by a preponderance of the evidence, that his CDS, toothpaste, and deodorant were lost or stolen while under the control of MaCI staff. Defendant suggested "[t]hese items could have easily been given by inmate Cordell to the other inmate for his use while he was AWL."

{¶ 4} 5) Defendant admitted liability of the loss of plaintiff's headphones. Defendant stated it "has no objection to an award of damages for the loss of the headphones." Evidence submitted shows the headphones were purchased on March 22, 2006 for \$29.71.

{¶ 5} 6) Plaintiff filed a response insisting his CD player is damaged. Plaintiff stated, "[m]y CD player did not have one scratch on it, and when it was packed up (11/30/07) it was in perfect condition." Plaintiff noted the CD player "now has scratches on it and it looks to me like it has been dropped." Plaintiff claimed he has knowledge his CD player was dropped, but did not provide any evidence other than his own opinion to prove the CD player was damaged at sometime after it was delivered to defendant and then recovered from the possession of another inmate. Plaintiff reasserted he is entitled to receive damages in an amount representing the total purchase price of the CD. Additionally, plaintiff seemingly claimed he received the disputed George Strait CD in a clothing box he received in June 2005.

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 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), 85-01546-AD.

{¶ 10} 5) 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.

{¶ 11} 6) "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, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265.

{¶ 12} 7) Plaintiff has failed to prove a causal connection between any damage to his CD player and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD. Plaintiff has failed to establish his CD player was damaged as a proximate cause of any negligence on the part of defendant. Plaintiff's claim for the CD player is denied.

{¶ 13} 8) Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Plaintiff failed to offer sufficient evidence to prove he owned a George Strait CD. Plaintiff has no right to recover for the loss of this CD.

{¶ 14} 9) Negligence on the part of defendant has been shown in respect to the loss of three additional CDs, toothpaste, deodorant, and headphones. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 15} 10) 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.

{¶ 16} 11) 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.

{¶ 17} 12) Based on the evidence presented defendant is liable to plaintiff in the amount of \$80.00.

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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 \$80.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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