

# 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](http://www.cco.state.oh.us)

SCOTT WAGNER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00338-AD

Interim Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} On June 10, 2013, plaintiff, Scott Wagner, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting that his art supplies were stolen from the arts and crafts room at defendant’s Allen Correctional Institution.

{¶2} Plaintiff asserted that “[i]n the summer of 2011, I started participating in the institution’s group arts and crafts program. . . . The institution required participant’s to purchase their own materials . . . [and] . . . store their projects in wooden cabinets within the facility’s arts and crafts room.” Plaintiff then asserted that cabinets were broken into on numerous occasions; two cabinets in February, 2012; one in approximately March, 2012; two more, including the one containing plaintiff’s belongings, on May 25, 2012. After each break in, plaintiff expressed his concern that his property would be stolen to the defendant. Plaintiff contended that the defendant assured him his belongings were safe and “the institution would reimburse us for our items that was stolen from the arts and crafts room.”

{¶3} Plaintiff seeks \$118.14 to replace the following missing items: 1 glue stick

\$2.57; 1 tape \$1.34; 10 paints \$10.30; 2 metallic paints \$3.18; 1 pt gloss \$6.94; 2 pts paint \$9.88; 1 12 pc brush set \$6.82; 1 5 pc brush set \$5.09; 1 2" brush \$1.71; 1 brush bag \$4.26; geometry set \$2.99; 1 ruler \$.91; 50 sheets drawing paper \$2.78; 50 sheets card stock \$12.87; 20 assorted pens, markers and high-lighters \$26.39; shipping and handling \$13.95; sales tax \$6.16.

{¶4} Defendant submitted an investigation report denying liability for plaintiff's alleged loss of property. Defendant admitted that a theft occurred but asserted that plaintiff "provides no evidence that he ever owned or possessed any of the art supplies he alleges as stolen" and "fails to offer any evidence that satisfies his burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by Defendant's negligence." The defendant contended that "not only were the art supplies secured with a padlock, but once the theft was reported, a shakedown was performed and other inmates' property was searched in order to recover Plaintiff's property in accordance with policy."

{¶5} Plaintiff filed a response to defendant's investigation report disagreeing with several points. In regards to whether or not plaintiff has provided sufficient evidence of proof that "he ever owned or possessed any of the art supplies he alleged as stolen." Plaintiff argued: "[t]o the contrary, Plaintiff has provided this evidence in the form of the Plaintiff's sworn testimony." Plaintiff contended that the defendant is in possession of all of his receipts related to the art supplies, pursuant to defendant's policies. The plaintiff asserted that defendant admitted plaintiff possessed in the items in an Inter-Office Communication which stated: "Inmate Wagner 455-592 property that he reported stole [sic] also matched recreation's inventory of his property in his folder." Plaintiff contended that it was the "duty of the Defendant to provide those receipts as a part of the Report of Inspector of Institutional Services, if the Court requires the production of the receipts from the Plaintiff, upon notification he will attempt to obtain them from the Defendant himself and provide them to the Court in a Supplemental Response to the Investigation Report."

{¶6} The plaintiff denied defendant's second contention that he has failed to prove that he suffered a loss that was proximately caused by the defendant's negligence. The plaintiff contended the art supplies were in defendant's control and kept in "old dilapidated wooden cabinets with insufficiently small hinges and hasps that could easily be busted open, while the Defendant kept its own art supplies in heavily secured closets within the same room." Plaintiff argued that there was little or no supervision of the arts and crafts room resulting in the plaintiff and several other inmates having their property stolen.

#### CONCLUSIONS OF LAW

{¶7} 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*, 76-0356-AD (1976).

{¶8} This court in *Mullett v. Department of Correction*, 76-0292-AD (1976), 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. This court finds defendant's absence of any attempt to ensure plaintiff's property was safe, even after it had knowledge of several broken cabinets and stolen items prior to plaintiff's loss to be unreasonable.

{¶9} 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*, 76-0368-AD (1977).

{¶10} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant's conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶11} Defendant has a duty to use ordinary care in packing or storing property even if it is due to disciplinary confinement. *Gray v. Department of Rehabilitation and*

*Correction*, 84-01577-AD jud (1985).

{¶12} If plaintiff's property was lost due to defendant's failure to use ordinary care in storing his property, then defendant would be liable. However, 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*.

{¶13} When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Department of Rehabilitation and Correction*, 85-01562-AD (1985); *Sallows v. Department of Correction*, 85-07773-AD (1986). By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Buhrow*; *Sallows*.

{¶14} If property is lost or stolen while in defendant's possession, it is presumed, without evidence to the contrary, defendant failed to exercise ordinary care. *Merrick v. Department of Rehabilitation and Correction*, 85-05029-AD (1985); *Cox v. Southern Ohio Training Center*, 84-03740-AD (1986).

{¶15} In order to establish a prima facie case for violation of a bailment duty, the plaintiff must show that the bailment relationship existed, that the bailee had taken possession of his property, and the bailee failed to return the property. *The Deli Table, Inc. v. Great Lakes Mall*, 11<sup>th</sup> Dist. No. 95-L-012 (Dec. 31, 1996). The plaintiff has provided sufficient evidence that the defendant took possession of his property and he was given no choice but to store his property in the arts and crafts room.

{¶16} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E. 2d 212 (1967), 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*, 176 Ohio St. 61, 197 N.E. 2d 548 (1964). Defendant argues that the plaintiff has failed to prove ownership of the items in question.

{¶17} This court is not persuaded by defendant's argument, as defendant

admitted in inter-office communication that the missing items were listed on plaintiff's inventory list for the arts and crafts room.

{¶18} 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.

{¶19} In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 118 N.E.2d 147 (1954).

{¶20} Negligence on the part of defendant has been shown in respect to the issue of protecting plaintiff's property. *Billups v. Department of Rehabilitation and Correction*, 2000-10634-AD (2001).

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

{¶22} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc. 2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶23} Damages assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App. 3d 42, 495 N.E.2d 462 (10<sup>th</sup> Dist. 1985). 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*, 102 Ohio App. 3d 782, 658 N.E. 2d 31 (12<sup>th</sup> Dist. 1995).

{¶24} Plaintiff has suffered damages in the amount of \$118.14, plus the \$25.00 filing fee which may be awarded as compensable costs pursuant to R.C. 2335.19.

See *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. No. 1990).

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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 \$143.14, which includes the filing fee. Court costs are assessed against defendant.

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DANIEL R. BORCHERT  
Interim Clerk

Case No. 2013-00338-AD

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MEMORANDUM DECISION

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