

# 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

CURTIS NEWSOME

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00341-AD

Interim Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} Plaintiff, Curtis Newsome, filed this complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting he was missing personal property due to the negligence of the defendant. Plaintiff explained that he was placed in segregation along with his “cellie” (Stephen Crimi) on or about April 15, 2013. He contended that during the pack up of his property, his belongings were purposely mixed together with the property belonging to his cellie. He asserted that he never received a “pack-up sheet,” and after numerous requests to view his property, he was finally given the chance (approximately 45 days after the pack-up), at which point, he saw that a substantial amount of his property was missing.

{¶2} Plaintiff asserted that there was no reason for the defendant to combine his property with Mr. Crimi’s, as their belongings were separated in their respective property boxes when they left their cell the morning on April 15, 2013. He provided the Inmate Property Record, filled out and signed by one of the corrections officers who packed his property, without his presence. He also included receipts/ proof of ownership for all of the allegedly missing items.

{¶3} Plaintiff seeks \$813.73 in damages to replace the missing items. Plaintiff submitted the filing fee with the complaint.

{¶4} Defendant filed an investigation report and included the Report of Inspector of Institutional Services which stated: “[o]ur process is to pack everything together when inmates are from the same cell and they assist with the pack up.” The inspector asserted that he “[r]eviewed previous pack up dated 10/30/13<sup>1</sup> and 3/11/13 and inmate did not have very most of the property he is claiming.” The defendant contended that plaintiff “plead guilty to conduct report TCI-13-001364 in his state [sic] he stated he had money issues.” Further, “[i]n the claim he states his mail and books were in one bag along with his cellmates.”

{¶5} Plaintiff filed a response to defendant’s investigation report in which he explained that his statement, “I have money issues” was completely unrelated to his missing property. In fact, when he made that statement in response to a rules infraction, he was trying to explain that he was in danger, because he has money and some inmates were trying to extort him through threats of violence. Plaintiff asserted that his property should not have been confused with his roommates and/or it should not have been lost, because every item he owns is labeled, in permanent marker, with his name and number. In response to defendant’s assertion that most of the missing items were not listed on either or two, previous property sheets, plaintiff explained that these items were all purchased after 3-11-13 (providing receipts to prove this statement). He also stated: “[a]s for the pickup slip on March 11, 2013. When I came to SEG that day, they let another inmate Charles Taggert 610-172, handle and sign for my pack-up. I never received a copy of this pack up slip.” Plaintiff provided a copy of this property record, which appears to have another inmate’s signature on it. Upon closer inspection, and contrary to defendant’s assertion, the list indicates that plaintiff possessed a reasonable

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<sup>1</sup> The court believes this to be a typo, as defendant provided an inmate from property sheet for the plaintiff, dated 10/30/12.

amount of books and pictures, but does not list any CD's.

#### CONCLUSIONS OF LAW

{¶6} 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 (1979).

{¶7} 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.

{¶8} 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).

{¶9} 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). 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).

{¶10} 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*.

{¶11} 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*.

{¶12} 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).

{¶13} 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). Plaintiff has demonstrated that defendant took possession of his books and pictures.

{¶14} When an inmate signs a receipt stating defendant packed all of his property and the inmate did not contest the fact of this receipt, he has failed to show ODRC was liable for the alleged property loss. *Yocum v. Chillicothe Correctional Institution*, 78-0142-AD (1978). Plaintiff was not given an opportunity to sign his property record on March 25, 2013, and therefore, could not express any concerns he may have had about missing property. Even so, this property record indicates that he was in possession of books and assorted pictures. Further, plaintiff has provided receipts for each of the items he claims are missing.

{¶15} 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). The court finds plaintiff's assertions, regarding his personal property, persuasive. The defendant's argument relies on a property record that was completed on March 11, 2013 and signed on March 25, 2013, by another inmate, a fact the court views with suspicion. The plaintiff has provided proof of ownership for all of the items in question, and this court has no reason to question the veracity of these documents. As such, the plaintiff's claim is granted. The plaintiff miscalculated his losses, which actually

total \$814.23. Plaintiff is hereby awarded that amount, plus reimbursement for the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. 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 \$839.23, which includes the filing fee. Court costs are assessed against defendant.

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DANIEL R. BORCHERT  
Interim Clerk

Case No. 2013-00341-AD

- 7 -

MEMORANDUM DECISION

Entry cc:

Curtis Newsome, #622-454  
P.O. Box 120  
Lebanon, Ohio 45036

Stephen C. Gray, Chief Counsel  
Department of Rehabilitation  
and Correction  
770 West Broad Street  
Columbus, Ohio 43222

DM/laa  
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