

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

THANYHAN BANKS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00474-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Thanyan Banks, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting that his MP3 player went missing while under defendant’s possession and control. Plaintiff stated: “I filled out a Theft Loss Report for my MP3 player in April 2013 & at the end of April 2013 I was told by 2nd shift regular in 2A that Sgt. Gault found my MP3 player in Unit 3C & he told them I would have it back in a week, but I never receive [sic] it. I got kites included with this claim where I wrote him asking him when am I getting my MP3 back & he would always say when he clean [sic] out the vault.”

{¶2} Plaintiff seeks \$480.00 in damages, \$112.30 (the cost of the MP3 player), plus \$368 (the total cost of the 230 songs uploaded on MP3 player). Plaintiff provided a receipt for purchase of the MP3 player, but no documentation related to the cost of the downloaded songs. Rather, he listed a phone number for Access Secure Pak, which apparently could verify the cost of individual MP3’s. Plaintiff submitted the \$25.00 filing fee with the complaint.

{¶3} Defendant filed an investigation report which stated: “Plaintiff has failed to satisfy his burden of proving that he suffered an injury or loss that was proximately caused by Defendant’s negligence. Plaintiff filed a theft/loss report on 3/18/13; however, review of Plaintiff’s property records reveals that Plaintiff did not have an MP3 player in his possession when he was placed in segregation on 2/24/13. Additionally, Plaintiff signed the property form on 2/28/13 which indicated that all his property was present, which did not include an MP3 player.”

{¶4} Plaintiff filed a response to defendant’s investigation report and stated: “[a]s far as me signing my name to me pack-up slip without my MP3 being on there, one, they won’t give you bedding or seg. Property if you don’t sign. I signed because my MP3 player was already in care of the Institution. I knew where it was.”

CONCLUSIONS OF LAW

{¶5} 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).

{¶6} 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.

{¶7} 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).

{¶8} 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).

{¶9} 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*.

{¶10} 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*.

{¶11} 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).

{¶12} 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*, 11th Dist. No. 95-L-012 (Dec. 31, 1996). Here, plaintiff's MP3 player was in defendant's property room when it became lost. Defendant admitted it was in possession on or about July 1, 2013 in an Informal Complaint Resolution which stated: "The items in question were removed from [illegible] vault by Sgt. Gault." Further, Sgt. Gault did not deny possession of the MP3 player in two separate kite responses.

{¶13} 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). However, a plaintiff is not automatically barred from proving his claim if he signed an inmate property record, acknowledging receipt. The defendant

contended that the plaintiff signed his property record upon release from segregation (which did not include his MP3 player). Plaintiff does not deny this. The record indicates that plaintiff believes he had to sign the record in order to obtain his property, even with the knowledge that the property was missing. 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). In light of the facts of this case, the court is persuaded by plaintiff's assertions that his property went missing while in the possession of defendant.

{¶14} 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*, 85-01546-AD (1985).

{¶15} 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.*, 161 Ohio St. 82, 118 N.E. 2d 147 (1954).

{¶16} The plaintiff has met his burden of proving his losses were proximately caused by defendant's negligence. As such, plaintiff's claim is granted. However, the damages must be limited to a reasonable amount substantiated by the evidence before the court.

{¶17} 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).

{¶18} 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).

{¶19} In a situation where damage assessment for personal property destruction or loss 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*, 34 Ohio App. 3d 282, 518 N.E. 2d 46 (12th Dist. 1986).

{¶20} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris*, 25 Ohio App. 3d 42, 495 N.E. 2d 462 (12th Dist. 1985).

{¶21} Here, the plaintiff has provided no documentation substantiating the cost of the MP3's, or, more importantly, evidence that the MP3 player contained 230 downloaded songs. The court is not convinced that the songs could not be re-downloaded, without charge, from the original source. As such, plaintiff is awarded \$120.30 for the replacement of the MP3 player plus \$25.00 which may be reimbursed 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. 1990).

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

THANYHAN BANKS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00474-AD

Interim Clerk Daniel R. Borchert

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 \$137.30, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Interim Clerk

Entry cc:

Thanyhan Banks, #560-894
P.O. Box 120
5787 State Route 63
Lebanon, Ohio 45036

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

DM/laa
Filed 5/21/14
Sent to S.C. Reporter 9/11/15