

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

RICHARD WADSWORTH, JR.

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00357-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

- {¶1} Plaintiff, Richard Wadsworth, Jr., an inmate, filed this complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting his television was damaged during a shake-down of defendant’s Allen Correctional Institution (“ACI”). The shake down occurred on October 29, 2013, at approximately 9:30 a.m. Plaintiff was forced to exit his cell during the process. When he returned to his cell he realized his 13” AMP’D flat screen television and headphone extension were damaged. Plaintiff provided an affidavit of his cellmate, Thomas Thiel, who contended the television was working normally on October 29, 2013, prior to the shakedown. He also provided an affidavit of another inmate, Sammuell Kearse, who confirmed the television was working the evening before the shakedown and at approximately 6:00 a.m. the morning of the shakedown.
- {¶2} Plaintiff seeks \$235.00 to replace the damaged television and headphone extension. He paid the \$25.00 filing fee.

{¶3} Defendant filed an investigation report in which it denied liability for the damage to plaintiff's television based on the contention plaintiff has failed to prove, "Defendant's conduct was a factor in, or proximately caused the damage to Plaintiff's property." Defendant investigation revealed, "there was no way of determining when the alleged damage to the television and headphone extension occurred."

{¶4} Plaintiff filed a response to defendant's investigation report in which he asserted he followed all proper protocol in that he immediately alerted a staff member to the damage when he returned to his cell. Plaintiff provided two additional affidavits of inmates. One inmate, Charles Rhodes, confirmed the television was in working order the evening before the shakedown. The second inmate, John Rodney, confirmed plaintiff immediately notified defendant's staff when he returned to his cell and discovered the damage.

CONCLUSIONS OF LAW

{¶5} In order to prevail in a claim for negligence, 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 damages. *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.*, 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707 (1984).

{¶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 (2nd Dist.) citing *Miller v. Paulson*, 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521, (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265 (1989).

{¶7} It has been determined by this court that when a defendant engaged in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility*, 76-0356-AD (1979).

{¶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.

- {¶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 (1979).
- {¶10} 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).
- {¶11} 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 issue 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).
- {¶12} 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 and plaintiff's witness' statements persuasive in reference to the television's condition before and after the shake-down.
- {¶13} Negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction*, 2000-10634-AD (2001); *Tommy Lee Shafer v. Ohio Dept. of Rehab. & Corr.*, 2013-00418-AD (2014). 10) 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). Plaintiff has provided no evidence related to the value of the television, except for his assertion that the television and headphone extension is valued at \$235.00.
- {¶14} 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).
- {¶15} 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). This court finds \$235.00 a reasonable value for the replacement of a 13" AMP'D flat screen television and headphone extension. Consequently, judgment is rendered in favor of plaintiff in the amount of \$235.00 plus \$25.00 for the 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 \$260.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT

Deputy Clerk

Entry cc:

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DJM/tad
Filed 10/7/14
Sent to S.C. Reporter 9/14/15