

# Court of Claims of Ohio

The Ohio Judicial Center  
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KEVIN P. SCUDDER

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00733-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} Plaintiff, Kevin Scudder, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting on August 21, 2013, Correctional Officer (“C.O.”) Reed took possession of a Roho Nexus Spirit Cushion, a Roho High Profile Cushion, a Sunrise medical tray, that fits his wheelchair, and 15 pairs of men’s briefs. He stated another C.O. tried to get him to sign a release so this property could be destroyed, but plaintiff refused. Plaintiff explained he wished this property to be sent home, but he was informed by Sgt. Bridges that this property had already been destroyed.

{¶2} Plaintiff seeks damages in the amount of \$2,386.25, of which \$324.00 was for the Roho High Profile Cushion, \$310.00 for the Roho Nexus Spirit Cushion, \$218.50, for the medical tray, \$33.75 for 15 pairs of men’s briefs, and \$1,500.00 for punitive damages. Plaintiff also requests reimbursement for the \$25.00 filing fee he paid.

{¶3} Defendant filed an investigation report denying liability in this matter. Defendant stated a search of plaintiff’s cell revealed he possessed the above mentioned items which defendant considered to be contraband. Defendant submitted a copy of the

Hearing Officer's Report wherein plaintiff was found guilty of Rule 21 and 51 violations. The following disposition was imposed: "15 day commissary restriction." No mention was made concerning the destruction of plaintiff's property. It is defendant's position that this court has no jurisdiction over decisions rendered by the Rules Infraction Board and accordingly, plaintiff's case should be dismissed. The Rules Infraction Board affirmed the decision of the hearing officer.

{¶4} Finally, defendant asserted plaintiff's request for punitive damages should be denied pursuant to the holding in *Berke v. Ohio Dept. Of Pub. Welfare*, 52 Ohio App.2d 271, 369 N.E.2d 1056 (10<sup>th</sup> Dist. 1976).

{¶5} Plaintiff filed a response to defendant's investigation report. Initially, plaintiff dropped his request for punitive damages. However, plaintiff asserted defendant had no authority to destroy the remainder of his property.

{¶6} Plaintiff submitted correspondence from Ms. Yvette Thornton, RN, BSN, HSA, to Major Collins and J. Dennis, DWO on ODRC stationary dated August 22, 2013, which in pertinent part stated:

- a) "Re: Scudder #A209848, medical equipment.
- b) "Please be advised that the above inmate is permitted to have the below designated medical equipment:
- c) " 2 egg-crate mattresses
- d) "2 Roho Cushions"

{¶7} This letter was written the day after plaintiff's property was confiscated.

{¶8} Plaintiff refutes the contention that his property was contraband since he notes that upon his arrival at defendant's Franklin Medical Center, ("FMC") if the property in question had been contraband it would have been confiscated. Furthermore, plaintiff stated if ODRC had followed their own procedures he should have been allowed to send his property home at his expense, and the property should not have been destroyed.

{¶9} To support this contention, plaintiff presented evidence that one of his Roho

cushions was replaced by the vendor since it was still under warranty. Plaintiff received the replacement cushion on July 17, 2013, and the cushion was not considered contraband at that time.

{¶10} Next, plaintiff addresses the fact that ODRC in the information submitted with the investigation report focuses only on his underwear and the two egg-crate mattresses he possessed. Defendant does not mention the tray or the cushions. Plaintiff related that the egg-crate mattresses were returned to him.

{¶11} Finally, plaintiff presented evidence that he purchased the items in question. Plaintiff also requested depreciated amounts for the tray table and Roho High Profile cushion. The Roho Nexus Spirit cushion was confiscated approximately a month after its receipt so he requests the full amount for the loss of this cushion.

{¶12} Plaintiff included a Disposition of Grievance dated November 8, 2013, concerning his allegation that he was being harassed as the result of filing complaints against C.O. Reed. The disposition of grievance in pertinent part stated:

- a) “You state in your grievance this is in regards to continuous harassment by Officer Daniels for filing complaints against Officer Reed. You claim Daniels performs searches of your room and each time writes you a conduct report for items that was present during the previous search...
- b) “Based on my discussion with Sgt. Bridges and the review of your RIB file it is apparent Officer Daniels has issued you conduct reports that you were found not guilty of.
- c) “Based on this investigation of your grievance I find there is a problem therefore I am granting your grievance and have forwarded a report to the warden for further action.”

{¶13} Plaintiff also submitted copies of two letters sent by Carl D. Hyde, M.D., to Stewart Hudson, Chief of Medical Services and Warden Francisco Fineda, FMC, addressing his concern for the treatment of plaintiff by C.O. Reed. A response from

Stephen Gray, Chief Counsel and Managing Director-Risk Management to Dr. Hyde in pertinent part stated:

{¶14} “Although there was not sufficient evidence to support the claims, Officer Reed has moved to a different post. He does not have contact with Inmate Scudder at that post.”

{¶15} Plaintiff submitted Inmate Property Record - Disposition and Receipt MALE dated October 26, 2011, evidencing he possessed four cushions and a table tray for his wheelchair.

{¶16} Plaintiff filed a motion for leave to supplement his response to defendant’s investigation report. Plaintiff’s motion is GRANTED. Plaintiff reiterated the same allegations contained in his response and resubmitted some of the same evidence he submitted with the initial response.

#### CONCLUSIONS OF LAW

{¶17} 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). This court is persuaded by plaintiff’s testimony regarding the type and quantity of personal property removed from his cell.

{¶18} Ohio Administrative Code 5120-9-55(C)(1)(d) states:

- a) “(C) Disposition of contraband: any item considered contraband under this rule may be confiscated.
- b) “(1) Minor contraband.
- c) “(d) Minor contraband, valued at over one hundred dollars, which cannot be returned to the original owner if either an inmate or unknown and cannot be returned to sender, may, upon the issuance of an order of forfeiture by the court of common pleas in the county in which the

institution is located, be destroyed or utilized by the institution for training or other official purposes, or sold at public auction. The warden may file a petition for forfeiture with the court, asking the order be issued. The petition shall attach a list of the property involved and shall state briefly why the property cannot be returned. Each institution shall record the manner in which the contraband was disposed. In the event a court of common pleas issues an order that forfeited contraband be sold at public auction, the institution shall deposit any money received in the inmates' industrial and entertainment fund and record the date of disposition, the amount the forfeited contraband was sold for, and the name of any person who purchased the forfeited contraband at public auction."

{¶19} Ohio Administrative Code 5120-9-33(A) & (D) state:

- a) "(A) In addition to the state-provided basic necessities, inmates may be permitted, subject to the limitations and conditions described in this rule, to possess certain items of personal property, which are not state issued.
- b) "(D) Each inmate is responsible for ensuring that his personal property remain in conformity with the foregoing limitations. Property in excess of these limitations will be deemed contraband and disposed of pursuant to rule 5120-9-55 of the Administrative Code."

{¶20} Plaintiff has no right to pursue a claim for confiscated, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction*, 88-06000-AD (1988). The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle*, 7<sup>th</sup> Dist. No. 605, (Sept. 24, 1993). The trier of fact, in the instant action, finds sufficient documentation has been submitted to support the claim of ownership.

{¶21} It has been previously held an inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without

authority or right to carry out the property destruction. *Berg v. Correctional Institution*, 97-09261-AD (1988); *Wooden v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004-01958-AD, 2004-Ohio-4820. Defendant presented no forfeiture order as required by O.R.C. §5120-9-55.

{¶22} When destroying declared contraband, defendant is required to follow the provisions of the Ohio Administrative Code, section 5120-9-55(c). Defendant did not offer any documentation to establish plaintiff agreed to or authorized the destruction of the declared contraband articles.

{¶23} Plaintiff has offered sufficient proof to establish he owned the cushions, tray table, and underwear. Negligence on the part of defendant has been shown in respect to the destruction of plaintiff's property. *Hemsley v. N. Cent. Correctional Inst.*, Ct. of Cl. No. 2005-03946-AD, 2005-Ohio-4613; *Mayfield v. Richland Correctional Inst.*, Ct. of Cl. No. 2005-07976-AD, 2006-Ohio-358, *Brunner V. North Central Corr. Inst.*, Ct. of Cl. No. 2006-08020-AD, 2007-Ohio-6386.

{¶24} However, plaintiff admittedly possessed more than the seven pairs of underwear allowed by ODRC. While plaintiff contends the additional pairs of underwear are necessary due to his medical condition, plaintiff provided no medical documentation supporting this contention.

{¶25} 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).

{¶26} 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).

{¶27} 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 (12<sup>th</sup> Dist. 1986). This court finds plaintiff's valuation of the two cushions and tray table reasonable. However, plaintiff's underwear over the quantity limits will not be compensated.

{¶28} Consequently, judgment is rendered in favor of plaintiff in the amount of \$868.25, plus 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). It should be noted plaintiff was only compensated for the loss of seven pairs of underwear.

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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 \$893.25, which includes the filing fee. Court costs are assessed against defendant.

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DANIEL R. BORCHERT  
Deputy Clerk

Filed 5/4/15  
Sent to S.C. Reporter 5/2/16