

Court of Claims of Ohio

The Ohio Judicial Center
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ERVIN TRIPLETT, JR.

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00811-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Ervin Triplett, Jr., an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting on July 17, 2014, he was placed in J-Block segregation under Security Control status. He contended all of his personal property remained in his cell. On July 18, 2014, he was brought an Inmate Property Record - Disposition and Receipt listing all his personal property that had been inventoried and packed up by Correctional Officers (“C.O.”). All of his itemized property was stored in eight boxes. Upon his release from segregation on July 23, 2014, plaintiff asserted only seven boxes were returned to him.

{¶2} Plaintiff contended he notified defendant’s agents immediately about the missing box since it contained legal papers which plaintiff stated had to be filed in a pending civil action 1:15-CV-387, Triplett v. Jackson, et al. Plaintiff related he informed all necessary parties concerning the loss, but the box was never returned to him.

{¶3} Plaintiff asserted the following property was missing and never returned to him: reading glasses with black leather and metal case, Civil Actions Against State and Local Government: Its Divisions, Agencies and Officers, Every Trial Criminal Defense

Resource, five legal file folders, eight magazines, photo album, assorted paper/envelopes and stationary, and one XXL tan double strapped knee brace stabilizer. Plaintiff values the lost property at \$826.92. Plaintiff only provided a receipt for the purchase of the reading glasses for \$45.00.

{¶4} Plaintiff seeks damages in the amount of \$826.92. Plaintiff was not required to submit the \$25.00 filing fee.

{¶5} Defendant filed an investigation report denying liability for the loss of plaintiff's property. Defendant contended all the property packed up at the time of his relocation to segregation was returned to him. Defendant disputes that plaintiff possessed a knee brace or envelopes because these items were not contained in the July 18, 2014 property inventory sheet which plaintiff signed acknowledging that the property inventory accurately reflected the property he possessed at the time of his transfer to segregation. Accordingly, defendant recommended plaintiff's claim be denied.

{¶6} A review of the information provided by defendant revealed that "Sergeant McCroskey was also sent an email and he replied by stating that he had no idea that there was an issue and stated that inmate Triplett had 7 tubs of property when his property came to the vault and when released on 7-23-14 all 7 tubs were given to him along with an admonition to reduce the amount of property in his possession to the 2.4 limit and warning that if he did not then it would be done for him. Sergeant McCroskey stated there was no property in the vault and stated the unit staff is responsible for enforcing 2.4 limits per the MOA. The unit and legal services are responsible for disposition or over the limit or non-active legal work." However, an Inmate Property Record - Disposition and Receipt MALE dated July 18, 2014 at 2:30 a.m. clearly indicated there were 8 boxes. The record also revealed at that time plaintiff possessed reading glasses, a case for the glasses, Books, letters/papers, photo album, pictures, and legal pads. Plaintiff acknowledged this by signing the property record on July 18, 2014.

{¶7} Plaintiff filed a response to defendant's investigation report, reiterating his

contention concerning the loss of his property. Plaintiff related he has consistently informed defendant's agents about the missing tub of property, and only signed the property record upon his release because if he had not a conduct report would have been issued. Plaintiff stated the following property items which appeared on the July 18, 2014 property record were not returned to him: a pair of reading glasses, photo album, assorted pictures, legal tablets, and letters/papers. Plaintiff reconfirmed that the missing tub contained "two (2) legal books, five (5) large file folders, ten to fifteen manilla legal folders (each with material documents enclosed therein) and assorted paper/envelopes."

{¶8} While defendant asserted that on October 6, 2014, plaintiff was transferred to Toledo Correctional Institution ("TOCI") "his DRC 2055 clearly notes one (1) legal box and the DRC 2055 is very consistent with the DRC 2055 dated 7-18-14 which is the day in question as far as what property was in his possession, other than the food he consumed." However, defendant has failed to provide this court with the DRC 2055 dated October 6, 2014, nor has plaintiff provided any evidence concerning the property which was transferred to TOCI.

CONCLUSIONS OF LAW

{¶9} 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 it breached that duty, and that defendant's breach proximately caused his injuries. *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).

{¶10} 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).

{¶11} 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.

{¶12} 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-ADjud (1985).

{¶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).

{¶14} By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Buhrow; Sallows*. 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). Further, plaintiff’s failure to prove delivery of the property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction*, 86-02821-AD (1987). Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst.*, Ct. of Cl. No. 2002-05751, 2005-Ohio-4455; obj. overruled, 2005-Ohio-5068. A review of the property record dated July 18, 2014, clearly revealed that eight tubs of property were packed up and defendant’s agent Sergeant McCroskey stated seven tubs of property were returned to plaintiff. Accordingly, I find the tub which plaintiff designated as legal was lost while under defendant’s control.

{¶15} All property inventoried on July 18, 2014, could not have been contained in the legal tub, since plaintiff stated in his response that the legal tub contained two legal

books, five large file folders, ten to fifteen manilla legal folders and assorted paper/envelopes.

{¶16} Since plaintiff has failed to provide this court with evidence as to what property was transferred with him to TOCI, plaintiff, has failed to prove, by a preponderance of the evidence, the loss of any property not contained in the legal tub. Accordingly, plaintiff's claims for reading glasses, magazines, photo album, and knee brace are denied.

{¶17} 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 the Department of Corrections was liable for the alleged property loss. *Yocum v. Chillicothe Correctional Institution*, 78-0142-AD. Plaintiff explained that he only signed the receipt, because institutional policy requires a signature to receive inmate property. As such, plaintiff was given no choice but to sign, and has contested the accuracy of the list through the internal grievance process as well as this complaint.

{¶18} 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 (10th Dist. 1985).

{¶19} 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).

{¶20} 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).

{¶21} 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 facts 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).

{¶22} Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers*, 82 Ohio App.3d 148, 611 N.E.2d 492 (12th Dist. 1992). Only 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 (12th Dist. 1995). The court accepts plaintiff's valuation of the lost legal file folders, \$6.00 and the assorted paper/envelopes and stationary, \$25.00. However, plaintiff failed to provide documentary evidence of the value of the books *Civil Actions Against State and Local Government: Its Divisions, Agencies and Officers* and *Every Trial Criminal Defense Resource*. If these books were new plaintiff certainly would have provided receipts or invoices, therefore it is assumed these were old books with a fair market value of \$225.00.

{¶23} Therefore, judgment is rendered in favor of plaintiff in the amount of \$256.00.

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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 \$256.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

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