

[Cite as *Throckmorton v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5705.]

SCOTT A. THROCKMORTON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00876-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Scott Throckmorton, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted on November 12, 2013, all inmates in block D-3 at defendant’s London Correctional Institution (“LoCI”) were given a direct order to remove all combination locks from their foot and wall lockers and to proceed to the gymnasium. Whereupon, a shakedown search was conducted by defendant’s agents to locate contraband. Plaintiff asserted upon his return he found his foot locker unlocked and his CD player missing. Plaintiff asserted “L.O.C.I. acted negligently by failing to lock/secure my foot locker after they had completed their shake-down inspection, and allowing returning inmates access to my unsecured property, resulting in the theft of my CD player.”

{¶2} Plaintiff seeks damages in the amount of \$65.00 for the loss of his CD player. Plaintiff submitted the \$25.00 filing fee.

{¶3} Plaintiff presented evidence in a disposition of grievance dated April 17, 2014, wherein defendant noted plaintiff’s CD player was not confiscated during the shakedown operation. Plaintiff was offered a replacement CD player but refused since there was no guarantee that the offered CD player was in comparable condition to plaintiff’s CD player.

{¶4} Plaintiff submitted a copy of an Inmate Property Theft/Loss Report dated February 14, 2014. Under the section stating, “Explain what action (i.e. search) was taken at the time the theft was reported and if no action was taken, why not.” A handwritten notation stated “searched inmate and his bed area...nothing found.”

{¶5} Defendant submitted an investigation report denying liability. Defendant contended that plaintiff’s CD player “was stolen by other unknown inmates...Additionally, Defendant conducted a search for the missing property once it was put on notice of the theft; unfortunately the property was not found.”

{¶6} However, defendant admits that a dorm shakedown was conducted on the day in question and that all inmates were directed to unlock their foot and wall lockers and leave the area. Defendant did not deny that the lockers remained unlocked until the inmates returned to the dorm area. However, defendant asserted that “staff provided security to the dorm as the inmates returned.” Accordingly, defendant argues it should not be responsible for the theft of plaintiff’s CD player.

{¶7} Plaintiff filed a response to defendant’s investigation report. Plaintiff related he notified staff immediately upon returning to his dorm area that his CD player was missing. However, Correctional Officer (“C.O.”) Cann directed that a theft/loss not be filed on the mistaken belief that his CD player had been wrongly seized in the shakedown operation and remained in the contraband vault. Accordingly, plaintiff contended his failure to file a theft/loss report was premised on the erroneous belief that his CD player was in the contraband vault. Plaintiff asserted he tried to follow all necessary procedures but to no avail. Accordingly, plaintiff contended he should be compensated for the loss of his CD player.

CONCLUSIONS OF LAW

{¶8} 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).

{¶9} “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).

{¶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} When defendant engages in a shakedown operation, it must exercise ordinary care in doing so. *Henderson*.

{¶13} 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).

{¶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} 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 version of the facts particularly persuasive concerning the loss of his CD player which had been locked in his locker box prior to the shakedown.

{¶16} The shakedown created a mutual benefit bailment, since the shakedown furthered ODRC's goal of enforcing its rules and security. *Gilcrist v. Oakwood Forensic Center*, 84-04614-AD (1985); see also, *Bacote v. Department of Rehabilitation and Correction*, 61 Ohio Misc.2d 284, 578 N.E.2d 565 (Ct. of Cl. 1988).

{¶17} "When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Dept. of Rehab. & Corr.*, (July 26, 1985), Ct. of Cl. 85-01562-AD, unreported. 'A bailment is defined as a delivery of something * * * by one party to another, to be held according to the purpose or object of the delivery, and to be returned * * * when that purpose is accomplished.' (Footnotes omitted.) 8 Ohio Jurisprudence 3d (1978), 401, Bailments, Section 2." *Bacote*. A bailment relationship was created when ODRC's agent opened plaintiff's locker box and did not return the property to the locker box after the shakedown search was completed.

{¶18} By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property, *Buhrow*; *Sallows*. If property is lost or damaged 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). Furthermore, defendant offered plaintiff a replacement CD player which can be interpreted as an admission of fault for plaintiff's lost CD player.

{¶19} Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility*, 79-0132-AD (1981); *Russell v. Warren Correctional Inst.*, 98-

03305-AD (1999). A search of the plaintiff and his bunk area is not a sufficient search which satisfies the requirements of *Phillips* and *Russell*.

{¶20} 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).

{¶21} 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).

{¶22} 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).

{¶23} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App.3d 42, 495 N.E.2d 462 (10th Dist. 1985). Reasonable 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).

{¶24} Accordingly, judgment is granted in favor of the plaintiff in the amount of \$65.00, 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).

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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 \$90.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk