

[Cite as *Golphin v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5708.]

TYRONE GOLPHIN

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00204-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Tyrone Golphin, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting on March 13, 2015, he was transferred from defendant’s Richland Correctional Institution (“RICI”) to defendant’s Marion Correctional Institution (“MCI”). Plaintiff related upon his arrival at MCI he noticed his box had been opened so he requested an inventory of his property, which was refused. Accordingly, he refused to sign the pack-up slip. Plaintiff contended he contacted both institutions about the loss of his property to no avail.

{¶2} Plaintiff asserted the following property and their values were lost in the transfer: Relic Watch, \$250.00; wedding band, \$700.00; two pairs of pajamas, \$44.00; two bowls, \$9.94; and a towel, \$4.50. Plaintiff’s damages total \$1,008.44. Plaintiff was not required to submit the \$25.00 filing fee.

{¶3} Plaintiff submitted a copy of an Inmate Property Record dated March 13, 2015, and prepared at RICI prior to his transfer. The Property Record revealed the possession of a watch, wedding band, two pairs of pajamas, and two bowls but no towel.

{¶4} Plaintiff provided certificates of ownership for a wedding band and Relic watch. On the certificate of ownership for the watch it indicated that the watch was used when the certificate was issued on July 17, 2008.

{¶5} Plaintiff submitted a Disposition of Grievance dated June 17, 2015. In the Grievance, defendant stated that the pack-up officer, “Sgt. Merrill did not follow correct procedure in inventorying your property.” However, although defendant admitted the loss of plaintiff’s property defendant asserted the loss occurred at RICl not MCl and accordingly no action was taken.

{¶6} Defendant filed an investigation report, acknowledging that plaintiff’s watch and wedding band were lost during the transfer of his property from RICl to MCl. However, defendant contends 61-PRP-01 supports the valuation of plaintiff’s wedding band at \$100.00. Although, defendant admits the loss of plaintiff’s watch, defendant does not place a value on his watch.

{¶7} Defendant denied responsibility for the loss of plaintiff’s two pairs of pajamas and two bowls since he failed to provide proof of ownership. Finally, defendant contends plaintiff should not be reimbursed for the loss of his personal towel since the towel does not appear on the Inmate Property Record of March 13, 2015, and plaintiff signed the following statement prior to his transfer to MCl; “I certify that the above listed items are complete and accurate inventory of all my personal property.”

{¶8} Plaintiff filed a response to defendant’s investigation report. Plaintiff asserted the evidence submitted revealed he was in possession of the property he asserted was missing on his departure from RICl, as evidenced by the DRC2055. Second, plaintiff questions the value of a wedding band at \$100.00. Third, plaintiff contends the failure to list his personal towel on the DRC2055 is the fault of defendant’s agents, not his. Plaintiff contended it is reasonable that he possessed a towel. Finally, plaintiff asserted this court should accept the values he placed on the loss of his property.

CONCLUSIONS OF LAW

{¶9} In order to prevail, in a claim of 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} "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).

{¶11} 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).

{¶12} 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).

{¶13} "It is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." *Steven v. Indus. Comm.*, 145 Ohio St. 198, 61 N.E.2d 198 (1945), paragraph three of the syllabus. *Shinaver v. Szymanski*, 14 Ohio St.3d 51, 471 N.E.2d 477 (1984). Although strict rules of evidence do not apply in administrative determinations, plaintiff must prove his case by a preponderance of the evidence. *Underwood v. Dept. of Rehabilitation and Correction*, 84-04053-AD (1985).

{¶14} 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 statements credible.

{¶15} When plaintiff is transferred to another institution and defendant's agent take possession of plaintiff's property, the agent must exercise reasonable care in protecting the property. *Bacote v. Department of Rehabilitation and Correction*, 61 Ohio Misc.2d 284, 578 N.E.2d 565 (Ct. of Cl. 1988).

{¶16} 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).

{¶17} 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).

{¶18} 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). Plaintiff has failed to prove, by a preponderance of the evidence, that defendant took possession of his personal towel at the time of his transfer.

{¶19} 61-PRP-01 VI H. 3. states:

{¶20} "3. All legitimately possessed inmate property shall be transferred with the inmate when they are transferred to another state correctional institution. Any personal property not permitted in the inmate's immediate possession at a receiving institution pursuant to section VI.A.2 or VI.F.3 of this policy, shall be sent home at the inmate's expense or disposed of in accordance with Administrative Rule 5120-9-55, Contraband."

{¶21} Accordingly, the court finds plaintiff was in possession of two pairs of pajamas and two bowls at the time of his transfer to RIC. Defendant presented no evidence that plaintiff's possession of this property violated any rule and the defendant did not question the ownership of this property at the time of his transfer. Therefore, plaintiff shall be granted judgment for the loss of two pairs of pajamas and two bowls, \$53.94.

{¶22} Defendant admitted it lost plaintiff's wedding band and watch while they were in defendant's possession.

{¶23} Negligence on the part of defendant has been shown in respect to the loss of plaintiff's wedding band and watch. *Baisden v. Southern Ohio Correctional Facility*, 76-0617-AD (1977).

{¶24} 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). Plaintiff has presented no evidence other than his own statements to show the value of his wedding band and watch. A review of the certificate of ownership submitted by plaintiff revealed no value is placed on the wedding band, which is listed as silver, not gold as plaintiff asserted in his response, and the watch is listed as used.

{¶25} 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).

{¶26} 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).

{¶27} Upon review of all evidence submitted, the court finds plaintiff has suffered damages in the amount of \$178.94, which represents \$100.00 for the wedding band, \$25.00 for the watch and \$53.94 for two pairs of pajamas and two bowls.

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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 \$178.94. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk