

[Cite as *Spitler v. Ohio Dept. of Rehab. & Corr.*, 2016-Ohio-1341.]

DANIEL LEE SPITLER

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00985-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} On December 19, 2014, plaintiff, Daniel Lee Spitler, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff alleged that defendant used inmates rather than Corrections Officers (“C.O.”) to pack his personal property. As the result of this pack-up his New Balance shoes were missing. Plaintiff also asserted an inmate working with the C.O. also stole his personal property and that inmate was disciplined as a result of these thefts. Finally, his property was transported in a “damaged/wrecked Transport Van” which resulted in damage to his Amp’d 15” LCD television, Swintec Typewriter casing, and a “World Tour” Musical Instrument Padded Nylon Carry/Storage Case. Plaintiff asserted the following property items were lost or stolen at the time of the pack-up: New Balance shoes, Koss headphones, Norelco facial trimmer, four pairs of black socks, Mennen Speed Stick gel and solid antiperspirants, Kiwi brown shoe polish, Trend laundry detergent, 4”x6” magnetic mirror, hairbrush, nail clipper, loofah, shaver, toothbrush, toothpaste, briefs and other hygiene items. Plaintiff seeks damages in the amount of \$236.00. Plaintiff submitted the \$25.00 filing fee.

{¶2} On March 19, 2015, this court issued an entry granting plaintiff’s motion to amend his prayer amount to \$335.22. The \$98.32 increase in the prayer amount concerning the negligent damaging of a pair of Reebok gym shoes.

{¶3} On May 20, 2015, defendant submitted the investigation report denying liability in this matter. On June 11, 2015, plaintiff filed a response to defendant's investigation report with his response, plaintiff filed a motion for the production of evidence.

{¶4} On July 27, 2015, this court granted plaintiff's motion for discovery and required defendant to submit the following information unless production of these items violate ODR's internal security rules or the information does not exist.

- a) "A: 2013-'14 Hocking Correctional [HCU] Conduct Report/s charging inmate Lysikowski [199-279] with 'Theft or 'Stealing;'
- b) "B: HCU's Sergeant Melissa Rose's April 18, 2014 DRC-4194 Theft/Loss Report pertaining to this case;
- c) "C: HCU's April 2014 Inmate Witness Statements [by Blackburn/623-208, Young 208-895, as well as any/all others] regarding the theft of this Plaintiff's property as cited herein;
- d) "D: April 2014 HCU C-Dorm DVR surveillance video record showing this Plaintiff's property pack-up procedure with inmate Lysikowski assisting the Officer;
- e) "E: HCU's Inspector Alice Bartlett's NOG Disposition reporting that this Plaintiff's 'New Balance ME270' shoes, as cited in this case, had been sent from HCU to GCI on [Monday] May 5, 2014;
- f) "F: 2013-'14 Accident/Damage & Service records for HCU's transport van, and/or any & all records showing damage/s and condition of said vehicle prior to Monday, April 26, 2014 when this Plaintiff's property was forced into it for transfer to Columbus' FMC 'Hub';
- g) "G: Any April 26, 2014 FMC Transport 'Hub' record of property being transferred through the FMC 'Hub';

- h)** “H: GCI’s ‘R&D’/Property Staff record of damaged incoming property, specifically this Plaintiff’s property received by GCI on Monday, April 26, 2014;
- i)** “I: GCI Case Manager R. Vandersommen’s Tuesday, April 27, 2014 computer-entered account of this Plaintiff’s damaged property as described herein;
- j)** “J: GCI’s Acting Inspector Figueiredo’s offer to meet HCU halfway [50/50] to fairly compensate this Plaintiff for his losses and damages as described in the first three aspects of this case;
- k)** “K: Any statement by GCI Unit Manager Brian Puster regarding his own position and plans for this Plaintiff and his shoes on or about January 24-29, 2015.
- l)** “L: GCI DVR video surveillance recording/s from its housing area ‘A1’ on Wednesday, December 31, 2014 between the hours of 8pm & 9pm, showing this Plaintiff acting in an institutional decorating function in which the paint was accidentally spilled on his clothing & shoes during that time period [an eyewitness affidavit is already on record with this Court];
- m)** “M: All financial transaction documents at GCI, including both Commissary purchases and payments sent out by the GCI Cashier, showing all expenses incurred by this Plaintiff for the replacements of specific items cited within this case, as well as this Plaintiff’s expenses for repair services as cited in this case.”

{¶5} On August 27, 2015, defendant responded to this court’s order and provided items A-B, E-I and M only for the year 2014. The defendant’s investigation revealed items C-D and J-L do not exist. The videos requested in items D and L no longer exist since the retention period is thirty days and for items C, J, K there is no documentation to reflect that statements and/or offers were made.

{¶6} A conduct report dated April 24, 2014, in pertinent part stated:

- a) “Upon completing a investigation on Inmate Lysikowski stealing inmate Spitler property it was found thru inmate witnesses inmate Lysikowski did steal inmate spitlers property. Items include jpay4 charger, speed stick gel antiperspirant, speed stick solid antiperspirant, laundry detergent, Norelco T-150 facial trimmer, large nail clipper, magenetic mirror, toothpaste and mouthwash. Inmate lysikowski also tried to sell inmate spitlers jp4 device but could not find a buyer and turned it into the dorm C.O.”
- b) A Disposition of Grievance dated June 9, 2014, in pertinent part stated:
- c) “You signed for your property on 4/22/14 The Officer noted on your property sheet that the Noreco trimmers, JP4 charger and New balance tennis shoes were missing. It also was noted that your TV was working. So the only issues are the trimmer, JP4 charger and the tennis shoes. Sgt Rose found your Tennis shoes and they were sent to the Institutional Inspector on 5/14/14. You were requesting \$15.00 for the Charger and \$5.00 for the trimmer but you stated in your ICR those Inmates stole those items prior to the Officer having possession of your property. The institution is not responsible for items stolen by other inmates.”

{¶7} An Inmate Property Record dated April 21, 2014, confirms headphones, JP4 charger, New Balance tennis shoes and a Norelco trimmer were missing. It was further noted that “his Travel case was damaged in transport and his TV was in a case and damaged.”

{¶8} On September 11, 2015, plaintiff filed a motion to compel defendant to produce proper evidence. Plaintiff seeks prior conduct reports filed against inmate Lysikowski. However, the evidence is clear that the conduct report of April 24, 2014, indicates that inmate Lysikowski stole the above mentioned property. Conduct reports

issued against Lysikowski in the past are not relevant to the case at bar. Plaintiff's requests for witness statements concerning the theft or video surveillance recording are not necessary since this court has sufficient evidence to decide this case. Furthermore, plaintiff's request for service records of the Ford Econoline van which transported plaintiff's property are not relevant since defendant acknowledged damage occurred to plaintiff's property when it was transported.

{¶9} Plaintiff requested documentation concerning the possible damage of his property at Franklin Medical Center the "hub" used by ODRC when his property was transported from Hocking Correctional Institution to Grafton Correctional Institution. Plaintiff's request is based on speculation not fact, and this court will not engage in a "fishing expedition" to obtain documentation which has no basis in fact.

{¶10} Plaintiff seeks a statement from former Acting Inspector Figueredo, which plaintiff asserted would prove the damage to his property. However, plaintiff has the burden to prove his loss and the court is not in the position to help plaintiff prove his case.

{¶11} Plaintiff further states that two pairs of tennis shoes are in this court's possession, however, a check of the docket reveals this court never received tennis shoes from plaintiff.

{¶12} Finally, plaintiff submitted purported statements by Sergeant Melissa Rose, former GCI Inspector Figueredo, and GCI Unit Manager Brian Puster, however, none of these statements are signed or attested to by these individuals. Accordingly, they will not be considered. Plaintiff's motion to compel is denied for the reasons listed above.

{¶13} On November 18, 2015, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56.

{¶14} Civ.R. 56(C) states, in part, as follows:

{¶15} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of

evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 364 N.E.2d 267 (1977).

{¶16} However, a genuine issue as to material facts remains, so plaintiff's motion is denied.

CONCLUSIONS OF LAW

{¶17} 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).

{¶18} "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).

{¶19} 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).

{¶20} 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.

{¶21} 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).

{¶22} 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).

{¶23} “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*, (July 26, 1985) Ct. of Cl. No. 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 v. Ohio Department of Rehabilitation and Correction*, 61 Ohio Misc.2d 284, 578 N.E.2d 565 (Ct. of Cl. 1988). Based upon defendant’s statements a bailment relationship was created when ODRC’s agents took possession of plaintiff’s property and transported it between its institutions.

{¶24} There is a duty to return or otherwise account for bailed property; however, this duty is not based on negligence. The bailee is liable for not returning the bailed property, and is excused only if it has been lost without fault or want of care. Failure to redeliver a bailed article gives rise to an inference of negligence, and shifts the burden to the bailee to present sufficient evidence to counterbalance this inference. *Buhrow*. See also *Bacote*.

{¶25} Plaintiff signed the Inmate Property Record on April 22, 2014, acknowledging that “[a]ll of my personal property that is listed on this inventory form has been returned to me and I was offered the opportunity to inspect it before leaving the vault. I understand that once I leave that vault with my belongings I can no longer file a complaint concerning any missing or damaged property.” The Property Record noted that plaintiff’s headphones, JP4 charger, New Balance tennis shoes and Norelco trimmer were missing and the travel case as well as the TV was damaged. However, the Property Record also revealed that the TV was plugged in and it worked. No mention was made of damage to any other items. If there was additional damage this was the time this issue should have been addressed. When an inmate signs a receipt stating defendant packed his property and the inmate did not contest the facts on this receipt, he has failed to show that ODRC is responsible for his property loss or damage. *Yocum v. Chillicothe Correctional Institution*, 78-0142-AD (1978).

{¶26} Negligence on the part of defendant has been shown in respect to the issue of property protection after he was transferred between institutions. *Billups v. Department of Rehabilitation and Correction*, 2000-10634-AD (2001). This court finds the following property was lost during the transfer: headphones, JP4 charger, New Balance tennis shoes, Norelco trimmer, and a nylon carrying case was damaged.

{¶27} 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).

{¶28} 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).

{¶29} 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 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).

{¶30} Plaintiff has suffered damages in the amount of \$132.36, which represents \$33.99 nylon carrying case, \$59.87 New Balance tennis shoes, \$18.50 Koss headphones, \$5.00 Norelco Trimmer and \$15.00 JP4 charger, plus the \$25.00 filing fee which may be awarded as compensable costs pursuant to R.C. 2335.19. See *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 \$157.36, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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