

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOHNNY MCCARTER

Plaintiff

v.

GRAFTON CORR. INST.

Defendant

Case No. 2008-07977-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On or about August 7, 2007, plaintiff, Johnny McCarter, an inmate incarcerated at defendant, Grafton Correctional Institution (GCI), was transferred from the institution's general population to a segregation unit. Incident to plaintiff's transfer, his personal property was packed and stored in the GCI property vault.

{¶ 2} 2) Plaintiff recalled that he was released from segregation on September 7, 2007 and he regained possession of his property at that time. According to plaintiff, not all of his property was returned on September 7, 2007 and he consequently complained about missing items. On or about September 20, 2007, GCI staff forwarded the remainder of his property with the exception of a dental bridge and a fan. Plaintiff asserted that his dental bridge and fan were never returned and he has filed this complaint seeking to recover \$419.39, the replacement cost of his alleged missing items. Plaintiff also requested damages in the amount of \$66.61 for pain and suffering associated with property loss. The \$25.00 filing fee was paid and plaintiff seeks reimbursement of that cost along with his damage claim.

{¶ 3} 3) Plaintiff submitted a copy of a “Conduct Report” dated August 7, 2007 which notes GCI staff confiscated “1 tooth (bridge)” from plaintiff along with other property items. The “1 tooth (bridge)” was confiscated as contraband.

{¶ 4} 4) Defendant maintained plaintiff’s fan was packed on August 7, 2007 and returned to plaintiff on September 7, 2007. Defendant acknowledged plaintiff’s dental bridge was not returned to him reporting that “it was accidentally destroyed.” Defendant contended plaintiff has failed to offer sufficient evidence to prove the dental bridge had a value of \$400.00. Defendant requested plaintiff be ordered to provide proof of the replacement value of the dental bridge. Defendant submitted a copy of plaintiff’s property inventory dated August 7, 2007. This inventory indicates plaintiff’s fan was packed and returned to plaintiff’s possession on September 7, 2007.

{¶ 5} 5) Plaintiff filed a response insisting his dental bridge that was accidentally destroyed consisted of a partial plate of pure silver with a gold tooth. Furthermore, plaintiff again asserted his fan was not returned to his possession. Plaintiff contended he should be entitled to all damages claimed. Plaintiff submitted a document which appears to be an estimate from a dental officer for service listed as “maxillary partial-cast MI.” The estimate fee for the listed service amounts to \$1,966.00. Plaintiff related he purchased his destroyed dental bridge “numerous years ago prior to his incarceration.” Plaintiff has been incarcerated in the state prison system since August, 1991.

CONCLUSIONS OF LAW

{¶ 6} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, 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.

{¶ 7} 2) 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* (1979), 76-0356-AD.

{¶ 8} 3) 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* (1977), 76-0368-AD.

{¶ 9} 4) 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* (1985), 85-01546-AD.

{¶ 10} 5) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 11} 6) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, 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* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court finds plaintiff's assertions persuasive in regard to the loss of all property claimed.

{¶ 12} 7) Negligence on the part of defendant has been shown in respect to the loss of all property claimed including a fan and dental bridge. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 13} 8) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239, 577 N.E. 2d 160.

{¶ 14} 9) The standard measure of damages for personal property loss is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

{¶ 15} 10) In a situation where a damage assessment for personal property destruction 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* (1986), 34 Ohio App. 3d 282, 518 N.E. 2d 46.

{¶ 16} 11) A plaintiff is competent to testify in respect to the true value of his property. *Gaiter v. Lima Correctional Facility* (1988), 61 Ohio Misc. 2d 293, 578 N.E. 2d 895.

{¶ 17} 12) This court does not recognize any entitlement to damages for pain and suffering and other extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271, 6 O.O. 3d 280, 369 N.E. 2d 1056; *Waver v. Ohio Dept. of Corr.*, Ct. of Cl. No. 2006-02960-AD, 2006-Ohio-7250. Plaintiff's claim for pain and suffering is denied.

{¶ 18} 13) Defendant is liable to plaintiff for property damage in the amount of \$419.39, plus the \$25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 \$444.39, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Johnny McCarter, #240-272
2500 South Avon-Belden Road
Grafton, Ohio 44044

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
1/14
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