[Cite as *Blevins v. Ohio Dept. of Rehab. & Corr.*, 2025-Ohio-2515.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES BLEVINS Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2024-00089JD Magistrate Adam Z. Morris DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging negligence on the part of Defendant, Ohio Department of Rehabilitation and Correction (ODRC), related to loss of personal property and physical injury.[1] The case proceeded to trial before the undersigned Magistrate. For the following reasons, the Magistrate recommends judgment be entered in favor of Plaintiff in the amount of $328.95.

Background

{¶2} Plaintiff presented testimony on his own behalf as a sworn witness under oath. Plaintiff did not present any other witness testimony, but did move during his direct testimony for the admittance of exhibits into evidence. The Magistrate admitted Plaintiff's Exhibits 2 (to the extent not excluded by hearsay), 4, 5, 6, 7, 8, 13 (to the extent not excluded by hearsay), 14, 18, 19 (to the extent not excluded by hearsay), 23 (first page), 25 (first page) into evidence. Upon sustained objection, the Magistrate excluded Plaintiff's Exhibits 1, 3, 9, 10, 12, 15, 23 (second page), 24, 25 (second page), 28, 31, 34 from being admitted into evidence.

[1] The Court previously dismissed Plaintiff's claim "to the extent that Plaintiff brings a constitutional claim for retaliation related to Defendant intentionally throwing an object to cause him physical injury," pursuant to Civ.R. 12(H)(3). (March 5, 2025 Entry Denying Defendant's Motion for Summary Judgment).

{¶3} Upon the close of Plaintiff's case-in-chief, Defendant moved for dismissal pursuant to Civ.R. 41(B)(2). The Magistrate took Defendant's Motion under advisement and deferred ruling on the Motion until the close of all evidence.[2] *See* Civ.R. 41(B)(2) ("The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.").

{¶4} Trial proceeded to Defendant's case-in-chief.

{¶5} Defendant rested its case-in-chief after cross examination of Plaintiff, but without calling another witness or moving exhibits into evidence.

{¶6} Upon review, based on the evidence presented, the undersigned Magistrate issues the following findings of fact and conclusions of law.

Findings of Fact

{¶7} Plaintiff started as an inmate-to-inmate program aide at Defendant's Madison Correctional Institution (MaCI) on January 6, 2022. As a program aide, Plaintiff facilitated classes that instructed fellow inmates on rehabilitative tools used to help them return to society. Plaintiff has been crafting his self-created programs using his own experiences and six years of research. Plaintiff's programs were recognized and used by Defendant.

{¶8} Plaintiff worked as a program aide seven days a week in the Adams Charlie Unit at MaCI because no one else wanted to facilitate programs. Defendant provided Plaintiff with a room to facilitate his programs that remained locked while programs were not taking place. Plaintiff was required to have an officer unlock the door to the program room to begin, and then have an officer lock the door when Plaintiff was finished facilitating the program. Other inmates were not allowed in the program room when a program was not being facilitated. Plaintiff was the only person facilitating programs in the program room.

{¶9} Nothing prohibited Plaintiff from storing his personal program items in his lock box in his cell. But Plaintiff chose to store the program materials related to three of his self-created programs in the program room, in an unlocked 2.4 cubic foot lock box that

[2] Upon review, Defendant's Motion to Dismiss pursuant to Civ.R. 41(B)(2) is hereby DENIED.

Defendant provided him, rather than in his cell. Plaintiff's personal program materials were intermingled with state owned materials in the box so he could not put a lock on it.

{¶10} On November 6, 2022, after leaving the program room and making sure it was locked, Plaintiff's personal program materials went missing, which he discovered the next day. Plaintiff's personal program materials that went missing included, Roots of Traumatic Events (34 pages), Confrontation and Conflict (20 pages), and Rebuilding Character After Substance Abuse (25 pages), which were all stored in a ten-year-old zippered blue folder with a picture of the world and his name on it. Plaintiff did not see his personal program materials again after leaving the program room on November 6, 2022.

{¶11} Plaintiff testified that copies cost five cents per page, but presented no testimony or evidence on the value of the ten-year-old zippered blue folder.

{¶12} On December 18, 2022, Plaintiff was coming down the stairs from his cell and made a left, passing the officer's desk on his right. Two officers were present at the officers desk. And a yellow line separates the officer's desk from inmates.

{¶13} While passing the officer's desk, Plaintiff heard a slap from the officer's desk and seen a shiny object coming from the officer's desk flying toward his face. Plaintiff does not know specifically what caused the object to come flying toward his face.

{¶14} Plaintiff put his right hand up to block the object and knocked it down. Plaintiff does not know what the object was, nor how heavy or large it was; but only that it was shiny. Plaintiff did not stop or look down at the object. While Plaintiff continued walking, an officer came from behind the officer's desk to pick up the object.

{¶15} Plaintiff was subsequently informed he was bleeding by another inmate. Plaintiff suffered a cut on his right ring finger. Plaintiff reported to the nurse that day and his cut was washed, treated with antibacterial ointment, and a band-aid was applied. Even though the cut was no longer bleeding, Plaintiff returned to the nurse on December 19, 2022, to have it washed, treated, and band-aid applied. Plaintiff did not seek any further treatment after that day. The cut did not get infected. But Plaintiff does have a nondescript scar on his finger where he was cut.

{¶16} Plaintiff was reimbursed his co-pay for his nurse visits. Plaintiff presented no testimony or evidence on how the impact or cut to his right ring finger affected him nor any characteristics of the scar and how it affects him.

Conclusions of Law

{¶17} To prevail on a negligence claim, a plaintiff must prove by a preponderance of the evidence that defendant owed plaintiff a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused plaintiff's injuries. *Armstrong v. Best Buy Co., Inc*., 2003-Ohio-2573, ¶ 8, citing *Menifee v. Ohio Welding Prods., Inc*., 15 Ohio St.3d 75, 77 (1984).

{¶18} To recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining plaintiff's claim. If plaintiff's evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, plaintiff fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82 (1954), paragraph six of the syllabus.

{¶19} 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 (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 (1964). The Magistrate finds Plaintiff's testimony particularly credible and persuasive.

Personal Property

{¶20} "[Defendant] does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but it does have the duty to make reasonable attempts to protect such property. When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. By virtue of this relationship, [Defendant] must exercise ordinary care in handling and storing an inmate's property. However, a correctional institution cannot be held liable for the loss of contraband property that an inmate has no right to possess." (Internal citations omitted.) *Triplett v. S. Ohio Corr. Facility*, 2007-Ohio-2526, ¶ 7 (10th Dist.). "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." Internal citations omitted. *Velez v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-2932, ¶ 6 (Ct. of Cl.).

{¶21} Upon review of the evidence, the Magistrate concludes that Plaintiff has established by a preponderance of the evidence that a bailment relationship arose between Defendant and Plaintiff and Defendant failed to exercise ordinary care in handling and storing Plaintiff's property causing Plaintiff's loss of personal property. Defendant provided Plaintiff with a lockable program room to facilitate programs and a lock box in which to store his personal program materials. And although Plaintiff did not have a lock on the lock box, it was only stored in the program room, which required Defendant to unlock before a program started and lock after a program finished. The locked program room was not open to other inmates unless a program was being facilitated, and Plaintiff was the only person facilitating programs at the time his personal program materials went missing. When Plaintiff's personal program materials went missing, they were in Defendant's possession because Plaintiff had finished facilitating a program and exited the then locked program room, only to find his program materials missing the next day. There is no evidence that Plaintiff's personal program materials could be considered contraband related to the way they were stored. *See* Adm.Code 5120-9-55.

{¶22} Accordingly, the Magistrate concludes that Defendant breached its duty to exercise ordinary care in handling and storing Plaintiff's personal program materials, which resulted in Plaintiff's loss of personal property.

Physical Injury

{¶23} "In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks." *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-5106, ¶ 8 (10th Dist.). "The state, however, is not an insurer of inmate safety and owes the duty of ordinary care only to inmates who are foreseeably at risk." *Franks v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-1519, ¶ 17 (10th Dist.). "Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous

condition about which the state knows or should know." *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-5545, ¶ 16 (10th Dist.).

{¶24} "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.*, 6 Ohio St.3d 155, 160 (1983), quoting *Neff Lumber Co. v. First Natl. Bank of St. Clairsville*, 122 Ohio St. 302, 309 (1930).

{¶25} "The doctrine of res ipsa loquitor 'is "a rule of evidence which permits the trier of fact to infer negligence on the part of the defendant from the circumstances surrounding the injury to plaintiff."'" *Schultz v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-459, ¶ 59 (10th Dist.), quoting *Heiert v. Crossroad Community Church, Inc.*, 2021-Ohio-1649, ¶ 45 (1st Dist.) quoting *Hake v. George Wiedemann Brewing Co.*, 23 Ohio St.2d 65, 66 (1970). "In order for 'the doctrine to apply, a plaintiff must show "(1) [t]hat the instrumentality causing the injury was, at the time of the injury, or at the time of the creation of the condition causing the injury, under the exclusive management and control of the defendant; and (2) that the injury occurred under such circumstances that in the ordinary course of events it would not have occurred if ordinary care had been observed."'" *Schultz* at ¶ 59, quoting *Heiert* at ¶ 45, quoting *Hake* at 66-67.

{¶26} "However, '[t]he Ohio Supreme Court has stressed that this rule of evidence should only be used when a defendant's negligence is the only reasonable inference from the facts.'" *Schultz* at ¶ 60, quoting *Klasic v. Time Warner Entertainment Co.*, 2007-Ohio-1125, ¶ 19 (7th Dist.). Furthermore, "[t]he doctrine of res ipsa loquitor does not supply proof that the instrumentality caused the plaintiff's injuries; rather, such proof of causation is a prerequisite to application of the doctrine in the first instance." *Hickey v. Otis Elevator Co.*, 2005-Ohio-4279, ¶ 27 (10th Dist.).

{¶27} Upon review of the evidence, the Magistrate concludes that Plaintiff has established by a preponderance of the evidence that Defendant breached its duty of ordinary care and Plaintiff's injury was caused by an object that was, at that time, under the exclusive management and control of Defendant causing Plaintiff's injury. Plaintiff cannot establish exactly what caused the object to fly toward his face. However, while

passing the officer's desk with two officers present, which is separated from inmates by a yellow line, Plaintiff heard a slap from the officer's desk and saw a shiny object flying towards his face from the officer's desk causing him to react by putting his right hand up. The totality of the circumstances surrounding Plaintiff's injury show that the flying shiny object came from the officer's desk and an exercise of ordinary and reasonable care would not cause objects to fly outward from an officer's desk and/or toward inmates as they pass by. Ultimately, it is foreseeable that a flying object coming from the officer's desk could hit and cut an inmate passing by the officer's desk. And here the flying object caused a cut on Plaintiff's right ring finger.

{¶28} Accordingly, the Magistrate concludes that, pursuant to the doctrine of res ipsa loquitur, Defendant breached its duty to exercise ordinary care in failing to reasonably protect Plaintiff from a foreseeable risk of an object under Defendant's exclusive management and control, which resulted in Plaintiff's physical injury.

Damages

{¶29} As a general rule, the appropriate measure of damages in a tort action is the amount which will compensate and make the plaintiff whole." *N. Coast Premier Soccer, LLC v. Ohio Dept. of Transp.*, 2013-Ohio-1677, ¶ 17 (10th Dist.). "'The fundamental rule of the law of damages is that the injured party shall have compensation for all of the injuries sustained.'" *Landis v. William Fannin Builders, Inc.*, 2011-Ohio-1489, ¶ 37 (10th Dist.), quoting *Fantozzi v. Sandusky Cement Prods. Co.*, 64 Ohio St.3d 601, 612 (1992).

{¶30} "'It is axiomatic that every plaintiff bears the burden of proving the nature and extent of his damages in order to be entitled to compensation.'" *Jayashree Restaurants, LLC v. DDR PTC Outparcel LLC,* 2016-Ohio-5498, ¶ 13, (10th Dist.) quoting *Akro-Plastics v. Drake Indus.*, 115 Ohio App.3d 221, 226 (11th Dist. 1996). "[D]amages must be shown with reasonable certainty and may not be based upon mere speculation or conjecture . . ." *Rakich v. Anthem Blue Cross & Blue Shield*, 2007-Ohio-3739, ¶ 20 (10th Dist.).

Personal Property

{¶31} "As a general rule, the measure of damages for lost, destroyed, or stolen property is the reasonable market value of the property immediately before it is lost,

destroyed, or stolen." *Mayflower Transit, Inc. v. Commercial Trailer Co.*, 2000 Ohio App. LEXIS 4427 (10th Dist. Sept. 28, 2000); *see also Chasteen v. Mansfield Corr. Inst.*, 2011-Ohio-7062, ¶ 39 (Ct. of Cl.). "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." *Williams v. Ohio Dept. of Rehab. & Corr.*, 2010-Ohio-3634, ¶ 20 (Ct. of Cl.), citing *Cooper v. Feeney*, 34 Ohio App.3d 282 (12th Dist. 1986). Sentimental value is not recognized when awarding damages for lost or destroyed personal property. *See Capaniro v. Pickaway Corr. Inst.*, 2004-Ohio-3495, ¶ 5 (Ct. of Cl.). And "[a]n inmate cannot recover for mental anguish for the loss or destruction of his property." *Britford v. Pickaway Corr. Inst.*, 2007-Ohio-1206, ¶ 9 (Ct. of Cl.); *see also Waver v. Ohio Dept. of Corr.*, 2006-Ohio-7250, ¶ 6 (Ct. of Cl.).

{¶32} Upon review of the evidence, the Magistrate concludes that Plaintiff is only entitled to damages for the loss of his personal program materials, but not the ten-year-old zippered blue folder. Although Plaintiff made the program materials based on his personal experience and six years of research, only market value can be assessed for the 79 pages of lost program materials. Plaintiff testified that copies cost five cents per page. However, Plaintiff did not provide any testimony or receipts as to the value of the ten-year-old zippered blue folder, and, as such, has not proven its market value or standard value as the owner. Accordingly, the Magistrate concludes that Plaintiff has established damages by a preponderance of the evidence and is entitled to damages for the loss of his personal property in the amount of $3.95.

Physical Injury

{¶33} Because Plaintiff has no economic damages since his copays were reimbursed, he is only entitled to noneconomic damages, namely pain and suffering. *See Smith v. Perkins*, 2024-Ohio-1419, ¶ 39, 45-46 (3d Dist.); *see also* R.C. 2743.02(D). Regarding noneconomic damages for pain and suffering, the Supreme Court of Ohio has said:

> Other elements such as pain and suffering are more difficult to evaluate in a monetary sense. The assessment of such damage is, however, a matter

> solely for the determination of the trier of fact because there is no standard by which such pain and suffering may be measured. In this regard, this court has recognized that "no substitute for simple human evaluation has been authoritatively suggested."

Fantozzi v. Sandusky Cement Prods. Co., 64 Ohio St.3d 601, 612 (1992), quoting *Flory v. New York Central R.R. Co.*, 170 Ohio St. 185, 190 (1959). "[N]o specific yardstick, or mathematical rule exists for determining pain and suffering." *Kelly v. Northeastern Ohio Univ. College*, 2008-Ohio-4893, ¶ 8 (10th Dist.), quoting *Hohn v. Ohio Dept. of Mental Retardation & Dev. Disabilities*, 1993 Ohio App. LEXIS 6023, *10 (10th Dist. Dec. 14, 1993).

{¶34} Upon review of the evidence, the Magistrate concludes that Plaintiff suffered a cut on his right ring finger resulting in a nondescript scar. Plaintiff was hit on the right ring finger by the shiny object, but Plaintiff did not state what the object was or how heavy or large it was. Moreover, Plaintiff did not state how much pain the impact or cut caused him or how long he experienced pain or symptoms afterwards. Likewise, Plaintiff presented no evidence of how he was otherwise impacted by this incident.

{¶35} Nevertheless, Plaintiff did suffer a cut that required him to make two visits to the nurse, one on the day of his injury and a subsequent visit the following day. On his subsequent visit, the cut was no longer bleeding. Plaintiff did not require any further medical treatment, and the cut did not get infected. Plaintiff's co-pays for the nurse visits were reimbursed. And, while Plaintiff has a scar on his finger, he did not provide any testimony or evidence regarding the characteristics of the scar and how it affects him.

{¶36} Accordingly, the Magistrate concludes that Plaintiff has established damages by a preponderance of the evidence, that he suffered some minor pain from the impact and temporary cut to his right ring finger and a resultant nondescript scar, and is entitled to damages for his physical injuries in the amount of $300.00.

Conclusion

{¶37} Based upon the foregoing, the Magistrate concludes that Plaintiff satisfied the elements of his claims for negligence, loss of personal property and physical injury, by a preponderance of the evidence. Accordingly, the Magistrate recommends judgment

be entered for Plaintiff in the amount of $328.95, which includes the $25.00 filing fee paid by Plaintiff.

{¶38} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

ADAM Z. MORRIS
Magistrate

Filed June 16, 2025
Sent to S.C. Reporter 7/17/25