

IN THE COURT OF CLAIMS OF OHIO

MICHAEL PORTER

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2025-00155AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Michael Porter (“plaintiff”), an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on October 1, 2023, at defendant’s Pickaway Correctional Institution (“PCI”), plaintiff was placed in PCI’s Transitional Programming Unit (“TPU”). Plaintiff relates that his property was packed up and upon being released from TPU, plaintiff realized that some of his personal property was missing. Specifically, plaintiff claims that the following items were either missing or stolen upon receipt of his property: one (1) remote control TV RCA; one (1) bowl; two (2) quart-sized bottles; two (2) gray blankets; one (1) beard trimmer; one (1) pair of white earbuds; one (1) book clip; one (1) pillow case; one (1) sunglass kicker; two (2) pillows; one (1) mesh laundry bag; one (1) pair of shorts; two (2) blue bath towels; and an unspecified amount of legal work and personal writings.

{¶2} Plaintiff seeks damages in the amount of \$9,684.35, which includes actual damages of \$159.35 for replacement of property, the \$25.00 filing fee, \$500.00 for the costs of litigation, \$2,000.00 for the cost spent on research for litigation, \$3,500.00 for pain and suffering, and \$3,500.00 in punitive damages. Plaintiff submitted the \$25.00 filing fee.

{¶3} Defendant submitted an investigation report admitting liability in this matter. Defendant states that the investigation into plaintiff’s claims showed that his missing items were not properly packed up. Defendant requests that the court issue an order granting

plaintiff's claims in the amount of \$29.13 for the two (2) gray blankets, one (1) bowl, and two (2) quart sized bottles.

{¶4} Plaintiff did not file a response to defendant's investigation report.

{¶5} To prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed plaintiff a duty, that defendant breached that duty, and that defendant's breach proximately caused plaintiff's damages. *Armstrong v. Best Buy Co., Inc.*, 2003-Ohio-2573, ¶ 8, citing *Meniffee v. Ohio Welding Prod., Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶6} Whether a duty exists is a question of law to be decided by the court, while breach of such duty is a question of fact. *Snay v. Burr*, 2021-Ohio-4113, ¶ 14, citing *Mussivand v. David*, 45 Ohio St.3d 314, 318 (1989).

{¶7} “[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.).

{¶8} This court has consistently held that “[i]f 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 (Ct. of Cl.), ¶ 6. However, “[p]laintiff's failure to prove delivery of [the property] to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property.” Internal citations omitted. *Jones v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-365 (Ct. of Cl.), ¶ 10. Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Corr. Inst.*, 2005-Ohio-4455 (Ct. of Cl.), *obj. overruled*, 2005-Ohio-5068.

{¶9} Plaintiff has the burden of proving, by a preponderance of the evidence, that plaintiff suffered a loss and that this loss was proximately caused by defendant's negligence. *Coffman v. Mansfield Corr. Inst.*, 2009-Ohio-5859, ¶ 9 (10th Dist.).

{¶10} In addition, prison regulations, including those contained in the Ohio Administrative Code ("OAC"), "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, (1997), citing *Sandlin v. Conner*, 515 U.S. 472, 481-482 (1995). Moreover, this court has held that "even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence." *Williams v. Ohio Dept. of Rehab. & Corr.*, 67 Ohio Misc.2d 1, 3 (Ct. of Cl. 1993). Accordingly, to the extent that plaintiff alleges that ODRC somehow violated internal prison regulations and the OAC, plaintiff fails to state a claim for relief. See *Sharp v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-7064 (Ct. of Cl.), ¶ 5.

{¶11} 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).

{¶12} 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 court finds plaintiff's statements persuasive.

{¶13} The court finds that plaintiff has proven a bailment relationship and provided receipts for: one (1) remote control TV RCA and one (1) pair of white earbuds. Therefore, the court is able to grant an award for these items.

{¶14} However, the court finds that plaintiff has not proven a bailment relationship, ownership, and/or provided receipts for: one (1) beard trimmer; one (1) book clip; one (1) pillow case; one (1) sunglass kicker; two (2) pillows; one (1) mesh laundry bag; one (1)

pair of shorts; two (2) blue bath towels; and an unknown amount of legal work and personal writings. The court is therefore unable to grant an award for these items.

{¶15} The only issue left is damages. 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). As the trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. S. Ohio Corr. Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶16} Reasonable certainty as to the amount of damages is required, which is that degree of certainty to 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). In a situation where damage assessment for personal property destruction or loss 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*, 34 Ohio App.3d 282, 518 N.E.2d 46 (12th Dist. 1986).

{¶17} Plaintiff provided a receipt dated February 9, 2022, which shows plaintiff purchased a remote control TV RCA for \$12.41. This is not a depreciable item. Plaintiff is therefore entitled to \$12.41 for the remote.

{¶18} Plaintiff provided a receipt date December 1, 2021, which shows plaintiff purchased white earbuds for \$4.00. Headphones are a depreciable item. This court has the authority to determine depreciation based on the age of the property in question. *Sims*, 61 Ohio Misc.2d 239 (Ct. of Cl. 1988). Plaintiff purchased the headphones for \$4.00 and owned them for roughly two years. At a depreciation rate of 25% of replacement cost per year, the headphones are valued at \$2.00.¹

{¶19} Furthermore, defendant has admitted liability for: one (1) bowl; two (2) quart-sized bottles; and two (2) gray blankets for an amount of \$29.13. Therefore, plaintiff is granted \$29.13 for these items.

¹ A depreciation calculation chart can be found at <https://www.claimspages.com/tools/depreciation>.

{¶20} To the extent that plaintiff's request for legal preparatory costs can be construed as a request for reimbursement for costs of litigation, plaintiff is not entitled to expenses, postage, copying costs, and time spent researching related to the prosecution of his case. *Hamman v. Witherstine*, 20 Ohio Misc. 77 (C.P. 1969). Additionally, punitive damages are not recoverable in the Court of Claims. See *Drain v. Kosydar*, 54 Ohio St.2d 49 (1978).

{¶21} While plaintiff further claims to have endured pain and suffering for the absence of or lack of use of his personal property in connection with the loss of the property, "[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.).

{¶22} Therefore, judgment is rendered in favor of plaintiff in the amount of \$43.54, plus \$25.00 for reimbursement of the filing fee pursuant to the holding in *Bailey v. Ohio Dept. of Rehab. & Corr.*, 62 Ohio Misc.2d 19 (Ct. of Cl. 1990).

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ENTRY OF ADMINISTRATIVE
DETERMINATION

{¶23} 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 \$68.54, which includes reimbursement of the \$25.00 filing fee. Court costs are assessed against defendant.

HOLLY TRUE SHAVER
Deputy Clerk

Filed 7/29/25
Sent to S.C. Reporter 9/9/25