

[Cite as *Post v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-846.]

IN THE COURT OF CLAIMS OF OHIO

RONALD RAY POST :
Plaintiff :
v. : CASE NO. 2004-05210-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
REHABILITATION AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶ 1} Plaintiff, Ronald R. Post, an inmate incarcerated at defendant's Mansfield Correctional Institution ("ManCI"), alleged that on or about March 11, 2000, several items of his personal property were lost while under the control of ManCI staff. Among the claimed missing property articles were a beard trimmer, a notebook binder, law books, a remote control, stereo equipment, and two antennas. Plaintiff also claimed his electric word processor/typewriter was damaged by ManCI personnel. On April 2, 2001, plaintiff filed Case No. 2001-07955-AD seeking to recover \$1,000.00 for his alleged lost and damaged property. On December 6, 2001, Case No. 2001-07955-AD was dismissed without prejudice based on plaintiff's failure to pay the \$25.00 filing fee. On April 26, 2002, this dismissal was affirmed by a judge of the Court of Claims. On April 29, 2004, plaintiff filed this complaint seeking monetary recovery for the loss and damage of many of the same property items claimed in Case No. 2001-07955-AD.¹

{¶ 2} Plaintiff's complaint regarding property loss and damage

¹ The requisite material filing fee for Case No. 2004-05210-AD was paid.

from March, 2000, is governed by the statute of limitations for commencement prescribed in R.C. 2743.16² subject to the savings provision of R.C. 2305.19. Although plaintiff's second complaint was filed outside the two-year statutory time frame promulgated in R.C. 2743.16, it appears the applicable one year saving statute, R.C. 2305.19 applied to the filing of this complaint.

{¶ 3} The version of R.C. 2305.19, Ohio's general savings statute in effect at the time he filed 2004-05210-AD provided:

{¶ 4} "In an action commenced, or attempted to be commenced . . . if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff, or, if he dies and the cause of action survives, his representatives may commence a new action within one year after such date. ***"

{¶ 5} Under the clear and unambiguous language of this savings statute, a plaintiff must satisfy three specific requirements before the one-year refiling period is triggered: (1) plaintiff must have commenced or attempted to have commenced the original action within the statute of limitations period; (2) a judgment for the plaintiff is reversed or the action is dismissed otherwise than on the merits; and (3) at the time of the reversal or dismissal otherwise on the merits, the statute of limitations period has already run. See *Lewis v. Connor* (1985), 21 Ohio St. 3d 1, 4 ("It is clear that R.C. 2305,19 has no application unless an action is commenced and is then dismissed without prejudice after the applicable statute of limitations has run.") *Reese v. Ohio State*

² R.C. 2743.16(A) states:

"(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

Univ. Hosp. (1983), 6 Ohio St. 3d 162, 163. ("R.C. 2305.19 can have no application unless an action was timely commenced, was dismissed without prejudice, and the applicable statute of limitations had expired by the time of such dismissal.")

{¶ 6} Where an action is commenced within the time prescribed by R.C. 2743.16 and dismissed without prejudice after the expiration of that time, the savings provisions apply in the Court of Claims. *Reese*, supra. In the instant claim, considering plaintiff's original action was finally dismissed without prejudice on April 26, 2002, under the savings statute, plaintiff had until April 28, 2003 to timely refile his complaint. Plaintiff filed Case No. 2004-05210-AD on April 29, 2004. The court concludes plaintiff's action regarding property loss and damage from March, 2000, has been filed outside the time frame for all applicable statutes and consequently, these claims are dismissed.

{¶ 7} In a different matter involving property loss, plaintiff has alleged that at sometime after April, 2002, additional items of his personal property were lost or stolen while in the custody and care of ManCI staff. Plaintiff asserted his electric head shaver, belt, four towels, t-shirt, two locks, and a collection of "Liberian Journals" were lost or stolen while under the control of ManCI employees. Plaintiff seeks \$186.00 in damages for this alleged property loss.

{¶ 8} Defendant contended plaintiff failed to produce any evidence to establish his shaver, belt, towels, t-shirt, locks, and papers were lost while under the control of ManCI personnel. Plaintiff has not presented any evidence to show he delivered these alleged missing property items to defendant at anytime between April 29, 2002 and April 29, 2004. Plaintiff did file a grievance on May 27, 2003, complaining his shaver was lost by ManCI employees at sometime in October, November, or December, 2002. Defendant

denied receiving a shaver owned by plaintiff. On June 3, 2003, plaintiff's personal property was packed and delivered to defendant incident to plaintiff's transfer to an isolation unit. Plaintiff subsequently complained his belt and bath towel were not among the packed articles. In a grievance filed on July 22, 2003, plaintiff mentioned he had previously lost two locks at some unspecified time. Plaintiff did not provide any evidence to show the alleged loss of his property was attributable to any act or omission on the part of defendant. In the July 22, 2003 grievance, plaintiff complained his t-shirt was not returned after it had been packed and delivered to defendant on June 3, 2003. Defendant had no record of receiving plaintiff's t-shirt on June 3, 2003. Plaintiff did not establish his "Liberian Journals" were lost or stolen while under defendant's control. Defendant asserted any of plaintiff's property which was packed and stored in the ManCI property vault was subsequently returned to plaintiff.

{¶ 9} 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. However, 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. In the instant claim, plaintiff has failed to prove, by a preponderance of the evidence, his shaver, towels, t-shirt, locks, and "Liberian Journals" were lost as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 10} Plaintiff also filed a claim for the alleged loss of his stereo speakers. Plaintiff related his speakers were damaged

in February, 2002, while in defendant's custody. According to plaintiff, the speakers were damaged again in September, 2002 when he left ManCI and went to an outside hospital. On December 19, 2002, plaintiff was transferred from ManCI to the Corrections Medical Center ("CMC") and his property was supposedly delivered to defendant. On December 26, 2002, plaintiff returned from CMC and regained possession of his property noting his stereo speakers were once again damaged. On December 31, 2002, plaintiff received a conduct report from defendant and was ordered to mail his speakers, tape player, and stereo home. Plaintiff stated the conduct report regarding his property was heard on February 18, 2003. Plaintiff claimed his speakers had been intentionally damaged by ManCI personnel. Plaintiff related, at sometime after the conduct report was heard, he was told by ManCI Warden's Assistant, Rod Johnson, that he could keep his speakers, tape player, and stereo. However, plaintiff maintained he was informed on March 5, 2003, that he would either have to pay for the mailing of his stereo, tape player, and speakers or agree to have these property items destroyed. Plaintiff professed he authorized the mailing of his property to his mother, despite the fact he did not have enough funds in his inmate account to cover mailing expenses. After making this mail out authorization, plaintiff explained he was summoned to the ManCI property vault on March 12, 2003, where he received his tape player and stereo and was told he would be permitted to keep these items. Plaintiff stated he was also told at this time that his speakers would still have to be mailed to his mother. Plaintiff contended his mother never received his damaged speakers and he therefore, seeks recovery of \$100.00, the estimated replacement value of the alleged lost property.

{¶ 11} Documents submitted by defendant show plaintiff signed a cash withdrawal slip on March 5, 2003, authorizing funds be

deducted from his inmate account to pay for the mailing of his speakers. On March 6, 2003, defendant withdrew \$4.86 from plaintiff's inmate account for postage expenses. Defendant insisted plaintiff's speakers were mailed on March 7, 2003, to plaintiff's mother, Helen Post at her designated address. Defendant noted on the signed cash withdrawal slip that plaintiff's speakers were mailed on March 7, 2003.

{¶ 12} Plaintiff's claim for the loss of his speakers is denied. Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1989), 89-12968-AD.

{¶ 13} In another matter plaintiff claimed his typewriter was lost while in the care of ManCI personnel. Plaintiff recollected he made a mail order purchase of a typewriter (Olivetti 25") from Choice Distributors in Wisconsin in either November or December, 2002. Plaintiff related the ordered typewriter was shipped from Wisconsin around December 19, 2002, during a period when plaintiff was receiving medical treatment at CMC. After returned to ManCI, plaintiff recalled he signed an invoice to receive his Olivetti typewriter on or about January 14, 2003. Plaintiff explained he eventually took possession of the typewriter on or about January 25, 2003, and tried to use the device immediately after receiving it. However, plaintiff asserted the typewriter did not function properly when he tried to use it. The typewriter was described as a "damaged and faulty machine." therefore, plaintiff maintained he delivered the typewriter to the ManCI mailroom for shipping back to Choice Distributors on or about January 28, 2003. Plaintiff stated the typewriter was seemingly mailed from ManCI on or about February 7, 2003. According to plaintiff, "[b]etween the time that the

State was in possession of the manual typewriter and supposedly mailed it out, the typewriter got [LOST] and never made it back to the Company, Choice Distributors." Plaintiff noted his mother obtained a replacement typewriter for him from a firm identified as Royal Typewriters in New Jersey. However, plaintiff insisted the original Olivetti typewriter, "never got to its intended destination nor was it ever returned." Based on this proclaimed incident with the Olivetti typewriter, plaintiff asserted defendant is liable for the alleged loss of the appliance. Plaintiff claimed damages in the amount of \$102.90, the total replacement cost of an "Olivetti, lettera 25 manual typewriter."

{¶ 14} On January 28, 2003, plaintiff signed a cash withdrawal slip authorizing defendant to deduct \$8.01 from his inmate account to pay for mailing his damaged Olivetti typewriter back to Choice Distributors. According to defendant's records, the Olivetti typewriter was mailed from ManCI on or about February 7, 2003. On May 27, 2003, plaintiff filed a grievance wherein he noted Choice Distributors sent him a replacement typewriter for the damaged Olivetti typewriter. Plaintiff also noted the damaged Olivetti typewriter, "has never been found." Defendant contended that since plaintiff received a replacement typewriter from Choice Distributors seemingly at no charge to him, he has failed to establish he suffered any damages based on property loss. Other than his own assertions, plaintiff has failed to show his damaged Olivetti typewriter was not mailed from ManCI.

{¶ 15} 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 the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161

Ohio St. 82. Plaintiff, in the instant action, has failed to prove his Olivetti typewriter was lost while under the control of ManCI mailroom staff. 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. 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, paragraph one of the syllabus.

{¶ 16} The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61. The trier of fact does not find plaintiff's statements regarding the disposition of his Olivetti typewriter to be particularly persuasive. Plaintiff's claim for the loss of an Olivetti typewriter is denied since plaintiff has failed to prove the device was lost. Plaintiff has also failed to prove he suffered any damages in the matter involving his typewriter.

{¶ 17} In his complaint, plaintiff requested he be granted a damage award of \$1,000.00, "for emotional and mental tramatic [sic] experiences," involving his alleged property loss. This court does not recognize any entitlement to damages for mental distress and 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.

{¶ 18} On December 20, 2004, plaintiff submitted a letter asserting that on November 22, 2004, he filed a response and exhibits enclosed in "(8) individual No. 10 Embossed Envelopes." Plaintiff requests that this information be returned to him so he can file it with "the counsel for the state of Ohio." A check of

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DRB/RDK/laa
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