[Cite as Bard v. Ohio Dept. of Rehab. & Corr., 2005-Ohio-1390.]

IN THE COURT OF CLAIMS OF OHIO

DAVID P. BARD, JR. :

Plaintiff :

v. : CASE NO. 2004-08642-AD

DEPARTMENT OF REHABILITATION : MEMORANDUM DECISION

AND CORRECTION

:

Defendant

: : : : : : : : : : : : : : : : : :

FINDINGS OF FACT

- {¶1}1) Plaintiff, David P. Bard, Jr., a former inmate incarcerated at defendant's Belmont Correctional Institution (BeCI), has alleged that his personal property was lost or stolen while under the control of BeCI staff. Plaintiff recalled he personally packed over 150 photographs, art work. 7 homemade cards, letters, 20 art pictures, 15 greeting cards, legal documents, and various other papers into a box on March 23, 2004. Plaintiff related he delivered the box containing his property to a BeCI employee identified as Officer J. Rebecca. After handing the box over, plaintiff was transferred to a segregation unit. Plaintiff stated when he was released from segregation he discovered the box containing his personal mementos, photographs, art work, and papers could not be found.
- $\{\P\,2\}\,2)$ Plaintiff has contended his property was lost as a proximate cause of negligence on the part of BeCI personnel. Plaintiff has consequently, filed this complaint seeking to recover \$1,267.15, the stated estimated value of his alleged lost property items. The filing fee was paid.

- {¶3}3) Defendant acknowledged BeCI employees misplaced a box containing paper products assembled by plaintiff. Defendant denied the box contained any photographs or legal documents. Plaintiff's property inventories compiled after March 23, 2004, list assorted photographs and letters/papers being in plaintiff's possession. Defendant contended plaintiff has failed to establish the specific nature of the property contained in the box BeCI employees misplaced. Defendant further contended plaintiff has not produced sufficient evidence to prove the value of his lost property amounted to \$1,267.15. Defendant has admitted liability for property loss in the amount of \$175.00. Defendant has admitted liability for the filing fees of \$25.00.
- {¶4}4) In his response to defendant's investigation report, plaintiff insisted he placed photographs and legal materials in the box defendant subsequently lost. Plaintiff reiterated the property items in the box consisted of 150 photos, 4 personal intimate photos of his spouse, 7 homemade cards, 20 homemade art pictures, college enrollment papers, and legal materials. Plaintiff reasserted the real value of the lost property amount to \$1,267.15. Plaintiff compiled a list of the documents, mementos, and photographs. Plaintiff related the following items were contained in the misplaced box:
 - $\{\P 5\}$ "Approx. 120-150 Pictures
 - $\{\P 6\}$ "4 Personal Pictures of Spouse
 - $\{\P 7\}$ "5-7 Homemade cards & mementos
 - $\{\P 8\}$ "Several letter's 40-60 note book pages
 - $\{\P 9\}$ "15-20 store bought holiday cards
 - $\{\P 10\}$ "2 arrest affidavits
 - $\{\P 11\}$ "5 criminal complaints
 - $\{\P 12\}$ "2 police reports

- $\{\P 13\}$ "2 copies of indictment
- $\{\P 14\}$ "Sentencing transcripts
- $\{\P 15\}$ "Motion to withdraw guilty plea
- $\{\P 16\}$ "Motion for criminal rule 12(c)
- $\{\P 17\}$ "Motion for appointment of counsel
- $\{\P 18\}$ "Motion for production of pleading transcripts
- $\{\P 19\}$ "Motion for judicial release
- $\{\P 20\}$ "State's opposition
- $\{\P 21\}$ "Judgment entries
- {¶ 22} "Supplemental Brief motion
- $\{\P 23\}$ "States opposition to motion to withdraw
- $\{\P 24\}$ "Second judicial motion
- $\{\P 25\}$ "Several notebook pages of research material"
- $\{\P\ 26\}$ "Two motions from Federal Public Defenders Office
- $\{\P 27\}$ "4 Federal Forms
- $\{\P 28\}$ "Investigation report from Akron Bar Assoc.
- {¶29} "Investigation Report from Columbus Bar Assoc.
- $\{\P\ 30\}$ "Investigation report conclusion from Supreme Court Dis. Counsel
 - $\{\P 31\}$ "Several hand written letter's (Evidence material)
 - {¶ 32} "2 Notarized statements (Evidence material)
 - $\{\P 33\}$ "Civil action paperwork
 - {¶34} "Custody papers and court filings from custody trial
 - {¶ 35} "Birth certificate (Mine and my Daughters)
 - $\{\P 36\}$ "3 Newspaper articles of daughter and grandmother
 - $\{\P 37\}$ "8-10 Personal (Mine) Art Pictures
 - $\{\P\ 38\}$ "College Enrollment papers from Akron university"
- $\{\P\ 39\}$ 5) Assuming the list of articles is a complete and accurate representation of plaintiff's property loss, the trier of

fact finds the total value of the items listed does not exceed \$200.00.

CONCLUSIONS OF LAW

- $\{\P \ 40\}$ 1) Negligence by defendant has been shown. Baisden v. Southern Ohio Correctional Facility (1977), 76-0617-AD; Stewart v. Ohio National Guard (1979), 78-0342-AD.
- $\{\P41\}$ 2) 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.
- $\{\P42\}$ 3) Damage assessment is a matter within the function of the trier of fact. Litchfield v. Morris (1985), 25 Ohio App. 3d 42. 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 (1995), 102 Ohio App. 3d 782.
- $\{\P43\}$ 4) The court finds defendant liable to plaintiff in the amount of \$200.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey* v. Ohio Department of Rehabilitation and Correction (1990), 62 Ohio Misc. 2d 19.

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DEPARTMENT OF REHABILITATION : ENTRY OF ADMINISTRATIVE

AND CORRECTION DETERMINATION

:

Defendant

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 \$225.00, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

> DANIEL R. BORCHERT Deputy Clerk

Entry cc:

David P. Bard, Jr. 2128 17th Street S.W. Akron, Ohio 44314

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel For Defendant Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, Ohio 43229

DRB/RDK/laa Filed 3/16/05 Sent to S.C. reporter 3/25/05