

[Cite as *Howard v. Mansfield Correctional Inst.*, 2005-Ohio-4645.]

IN THE COURT OF CLAIMS OF OHIO

BERT E. HOWARD, SR. :
Plaintiff :
v. : CASE NO. 2005-01293-AD
MANSFIELD CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On March 7, 2003, plaintiff, Bert E. Howard, Sr., an inmate, was transferred from the Corrections Medical Center ("CMC") to defendant, Mansfield Correctional Institution ("ManCI"). Plaintiff had previously been incarcerated at ManCI before he was sent to CMC. At the time of the transfer back to ManCI, plaintiff was informed that he was not permitted to possess an electronic device described as a Brother GX-8250 word processor. The device was declared impermissible pursuant to internal institutional rules.

{¶ 2} 2) On March 27, 2003, plaintiff signed a form authorizing the destruction of his word processor. The word processor was subsequently destroyed by ManCI personnel.

{¶ 3} 3) Plaintiff contended his word processor unit was in fact permissible under defendant's internal regulations and the particular circumstances involving him. Furthermore, plaintiff maintained that at the time he authorized the destruction of his word processor he was under a mental disability due to a medical condition and therefore, had no understanding regarding the

consequence of his act in signing a property destruction form. Essentially, plaintiff insisted he did not have the mental capacity necessary to make an informed decision concerning the disposition of his declared impermissible property. Plaintiff filed this complaint seeking to recover \$167.97¹, the replacement cost of his destroyed word processor. Plaintiff argued this property item was indeed allowed and his signed destruction authorization should be declared invalid and voided.

{¶ 4} 4) Defendant acknowledged ManCI staff advised plaintiff he could not possess a word processor pursuant to internal institution policy. Defendant explained plaintiff was given the option of having the impermissible item either mailed out to a designated address or destroyed. Defendant submitted a copy of an "Inmate Contraband Slip" dated March 27, 2003, which bears plaintiff's signature and initials authorizing the destruction of a confiscated Brother word processor. Defendant's employee, Sgt. Shaw, witnessed plaintiff's signature on the contraband slip. Sgt. Shaw apparently reported plaintiff seemed coherent and capable of understanding when he was informed about his options regarding the disposition of his word processor. Defendant contended plaintiff's medical infirmities did not prevent him from making an informed rational decision about the disposition of his word processor. Defendant asserted plaintiff has failed to produce evidence to establish any mental impairment he may have suffered clouded his judgment in making a decision regarding his word processor.

{¶ 5} 5) Additionally, defendant related plaintiff's word processor was properly confiscated and was indeed impermissible under internal regulations. Defendant stated the particular word processor was subject to policy restrictions and consequently,

¹ The filing fee was paid.

impermissible.

{¶ 6} 6) On June 14, 2005, this court issued an entry granting plaintiff's motion for extension of time to file a response to defendant's investigation report. Plaintiff was granted 30 days from the entry date, June 14, 2005, to submit the response. Plaintiff failed to submit a response.

CONCLUSIONS OF LAW

{¶ 7} 1) 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} 2) 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} 3) Furthermore, an inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998). 97-09261-AD.

{¶ 10} 4) However, plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1984), 84-09071. By authorizing the destruction of his word processor plaintiff relinquished all ownership rights to the device.

{¶ 11} 5) An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of*

Rehab. and Corr. (2001), 2000-09849-AD.

{¶ 12} 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, paragraph one of the syllabus. 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 believe plaintiff was incapacitated to an extent that he was unable to appreciate and comprehend the consequences of his decisions.

IN THE COURT OF CLAIMS OF OHIO

BERT E. HOWARD, SR.	:	
Plaintiff	:	
v.	:	CASE NO. 2005-01293-AD
MANSFIELD CORRECTIONAL	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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

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 defendant. Court costs are assessed against plaintiff. 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:

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