

[Cite as *Luckette v. Ohio State Hwy. Patrol*, 2005-Ohio-3643.]

IN THE COURT OF CLAIMS OF OHIO

FRANK LUCKETTE :
Plaintiff :
v. : CASE NO. 2005-03423-AD
OHIO STATE HIGHWAY PATROL : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On September 18, 2003, plaintiff, Frank Luckette, was arrested after a routine traffic stop conducted by defendant, Ohio State Highway Patrol ("OSHP"). Incident to the arrest, the vehicle plaintiff was driving and its contents were impounded. Defendant engaged a business entity identified as 2A's Towing ("2A's") to tow and store the impounded vehicle, a 1987 Nissan truck which had been reported stolen. Plaintiff claimed ownership of various personal property items stored inside the impounded truck. At the time plaintiff was arrested, OSHP Trooper Michael P. Dirr recorded an inventory of the personal property stored in the impounded truck. The inventoried property included the following: one towel, eleven compact discs, three duffle bags containing clothing, an additional duffle bag, two pairs of shoes, a pair of sunglasses and a variety of foodstuffs. Trooper Dirr, marked a box on the vehicle inventory/custody report document pointing out the vehicle was not to be released without the required receipt, a document known as a form HP-60, issued by defendant, OSHP. The impounded vehicle and its contents were handed over to 2A's tow truck driver who then towed the truck to a storage facility.

{¶ 2} 2) Several days after the impounded truck was placed in

storage, 2A's apparently received information from the truck owner's insurer that the vehicle had been declared a total loss. Subsequently, on or about October 6, 2003, 2A's without notifying defendant and without obtaining an HP-60 release receipt, sold the impounded truck along with its contents to Perry's Auto Wrecking. The truck and its contents were then destroyed.

{¶ 3} 3) On or about October 9, 2003, after he was arrested and placed in custody, plaintiff petitioned the Van Wert Municipal Court to order the release of his personal property stored in the impounded truck. On October 31, 2003, after the truck and the property stored inside had been destroyed, a judge of the Van Wert Municipal Court granted plaintiff's petition and ordered OSHP to return plaintiff's personal property items.

{¶ 4} 4) Plaintiff asserted the following property items were contained in the impounded truck: two hats, four shirts, three pairs of dress slacks, four pairs of jeans, three pairs of shorts, two pairs of boots, two pairs of shoes, a pair of gym shoes, a sweatshirt, ten pairs of boxer shorts, twelve pairs of socks, a belt, a jacket, two towels, four wash cloths, a duffle bag, a backpack, an electric razor, hair clippers, ten compact discs, two cameras, a razor, assorted hygiene items, legal papers, and diplomas. Plaintiff filed this complaint seeking to recover the replacement cost of the property he had left in the 1987 Nissan truck which was delivered to OSHP and in turn delivered to 2A's. Plaintiff estimated the value of his property at \$1,178.53. The \$25.00 filing fee was paid on April 15, 2005.

{¶ 5} 5) Defendant denied any liability in this matter. Defendant contended OSHP is not the proper party defendant in this action. Defendant argued 2A's should be the entity to bear responsibility for the loss of plaintiff's property since 2A's ignored the instructions from defendant to obtain proper

authorization (the HP-60 form) before releasing the impounded truck and its contents. Defendant seemingly denied OSHP had any involvement in the loss of plaintiff's property. Defendant essentially professed all responsibility for the care of plaintiff's property was assumed by 2A's Towing when this towing company took control over the impounded truck and plaintiff's property contained inside the vehicle. Defendant did not cite any authority supporting the argument that OSHP's duty of care in regard to plaintiff's property was abrogated when the choice was made to transfer the property to the actual custody of 2A's.

{¶ 6} 6) Plaintiff insisted defendant, OSHP should bear liability for the loss of his personal property since defendant initiated the property's seizure and controlled the custody process.¹ Plaintiff implied defendant never truly relinquished control of his property by utilizing 2A's Towing as a depository source for the items. Plaintiff contended defendant was ultimately responsible for the property loss claimed, notwithstanding the choice made by defendant in employing the means and agent to care for the property. Additionally, plaintiff pointed out defendant's own submitted document, a Report of Investigation Vehicle Report, established OSHP intended to maintain control of his property. On this report under the described heading "Contents" [of the vehicle] a box is marked "Don't Release."

{¶ 7} 7) Plaintiff asserted defendant had a statutory duty (see R.C. 2933.41)² to hold and return to his possession the property

¹ Plaintiff filed a response on April 22, 2005.

² 2933.41 Disposition of property held by law enforcement agency.

R.C. 2933.41(A)(1) states in pertinent part:

"(A)(1) Any property, * * * that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency shall be kept safely pending the time it no longer is needed as evidence and shall be disposed of pursuant to this section."

R.C. 2933.41(B) states in pertinent part:

taken into custody on September 18, 2003. Plaintiff argued defendant violated this statutory duty in regard to caring for his personal property and therefore, should bear all liability for the loss of this property.

{¶ 8}8) Furthermore, plaintiff argued OSHP is ultimately responsible for the acts of 2A's since OSHP chose to engage 2A's to handle the personal property seized from plaintiff. Plaintiff related 2A's was acting on behalf of defendant and was under the direct control of defendant. Therefore, plaintiff asserted OSHP should be liable for the property loss claimed by failing to secure the items stored in the impounded vehicle. Plaintiff maintained he should be entitled to the full damages claimed, \$1,178.58. However, plaintiff did not offer any evidence other than his own assertion to establish defendant took control of the items claimed.

CONCLUSIONS OF LAW

{¶ 9}Plaintiff's claim is denied based upon the decision in *Estep v. Johnson* (1998), 123 Ohio App. 3d 307, wherein it was held defendant, OSHP could not be liable in a situation where OSHP conveyed an impounded vehicle to a private towing service and the towing service subsequently sold the impounded vehicle without first obtaining proper release forms from OSHP. In *Estep, id.*, the plaintiff's vehicle was impounded incident to an arrest by OSHP. The impounded vehicle was then transferred to a third-party private towing service and was stored on the lot of the towing service. The towing service, without obtaining a release from OSHP, later sold the vehicle to recover storage fees and plaintiff, Estep then sued both the towing service and OSHP to recover damages based on

"(B) A law enforcement agency that has property in its possession that is required to be disposed of pursuant to this section shall make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time."

the unauthorized sale of the vehicle. The claim by Estep against OSHP, filed in this court, was denied at the trial level and appealed.

{¶ 10} Upon appeal, the 10th District Court of Appeals held that OSHP was a bailee of Estep's property and could not avoid its mutual benefit bailment duties by transferring the property to a further bailee. See *Tomas v. Nationwide Mut. Ins. Co.* (1992), 79 Ohio App. 3d 624. However, the court found Estep failed to prove OSHP breached any mutual benefit bailment duty owed by entrusting impounded property to a third party towing service. Additionally, the court determined Estep failed to prove OSHP's conduct constituted property conversion. Therefore, plaintiff, Estep's action grounded in conversion was denied.

{¶ 11} In the instant claim, the facts have been established both defendant, OSHP and 2A's entered into a mutual benefit bailment relationship with plaintiff in regard to the personal property stored inside the impounded vehicle. This bailment arose between plaintiff and OSHP and remained between plaintiff and OSHP. 2A's as an agent of OSHP was engaged to carry out OSHP's responsibility once OSHP seized control of the impounded vehicle and its contents and 2A's then took control. See *Woods v. 6 & M Auto Co.* (1964), 9 Ohio App. 2d 192. Under the bailment relationship between OSHP and plaintiff, OSHP as bailee has the common-law duty to exercise ordinary care in protecting and keeping the bailed property safe. *Midwestern Indem. Co. v. Winkhaus* (1987), 42 Ohio App. 3d 235, 238. The mere fact OSHP entrusted plaintiff's property with 2A's did not prove OSHP breached its duty of ordinary care. OSHP was not aware or could not contemplate 2A's selling plaintiff's property after specific written instructions were forwarded to not release the seized vehicle and its contents unless proper documentation (HP-60 Form) was provided. OSHP had no

way of knowing 2A's would disregard written instructions less than three weeks after taking custody of the bailed property. Under the duty owed in a bailment relationship, OSHP was not charged with being prescient. Despite plaintiff's assertions that OSHP did not specifically instruct 2A's to hold the seized vehicle and its contents, sufficient evidence has been presented to show OSHP did in fact instruct 2A's in writing not to release the vehicle and its contents without proper authorization. Plaintiff pointed out defendant's submitted "Vehicle Inventory/Custody Report" compiled by Trooper Michael P. Dirr designates under the heading "Conditions For Release - HP-60 Needed." Plaintiff also pointed out Trooper Dirr wrote on this document "owner-hold HP-60 OSP REL." Plaintiff professed these written instructions suggest defendant gave permission to 2A's to release the seized vehicle and its contents.

The trier of fact disagrees. It appears these instructions were provided to caution 2A's not to release any property unless proper documentation was issued. Plaintiff has failed to offer sufficient evidence to establish OSHP breached any bailment duty owed.

{¶ 12} Plaintiff has also failed to prove OSHP's acts constituted a conversion of his property. *Estep*, supra at 315. Actionable conversion has been defined as "any exercise of dominion or control wrongfully exerted over the personal property of another." *Ohio Tel. Equip. & Sales, Inc. v. Hadler Realty Co.* (1985), 24 Ohio App. 3d 91, 93. OSHP's seizure and conveyance of plaintiff's property was not wrongful. Accordingly, OSHP's refusal to release plaintiff's property without a court order of release was not a wrongful exercise of dominion or control over the property claimed. No elements of conversion were proven. Furthermore, plaintiff has failed to offer any other legal premise actionable in this court that may entitle him to recovery from defendant, OSHP.

IN THE COURT OF CLAIMS OF OHIO

FRANK LUCKETTE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03423-AD
OHIO STATE HIGHWAY PATROL	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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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