

[Cite as *Scudder v. Mansfield Correctional Inst.*, 2005-Ohio-4632.]

IN THE COURT OF CLAIMS OF OHIO

KEVIN P. SCUDDER :  
Plaintiff :  
v. : CASE NO. 2005-05345-AD  
MANSFIELD CORRECTIONAL : MEMORANDUM DECISION  
INSTITUTION :  
Defendant :  
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On or about June 23, 2004, employees of defendant, Mansfield Correctional Institution ("ManCI"), received a package at the institution mailroom. The package was addressed to plaintiff, Kevin P. Scudder, an inmate incarcerated at ManCI. The package contained a gold cross and chain and had been sent from Warren, Ohio by Reverend Bernard Schmalzried and delivered to defendant's institution by the United States Postal Service. The gold cross and chain were lost at sometime after delivery was received by ManCI staff.

{¶ 2} 2) Consequently, plaintiff filed this complaint seeking to recover \$73.14, the purchase price of the cross and chain, plus \$25.00 for filing fee reimbursement.<sup>1</sup> Plaintiff submitted evidence seemingly showing the package containing the cross and chain was insured for \$80.00. Plaintiff did not submit a sales receipt establishing the purchase price of the cross and chain. Plaintiff did not submit any statements from any individuals who could confirm the purchase price of the cross and chain.

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<sup>1</sup> The filing fee was paid.

{¶ 3}3) Defendant admitted liability for the loss of the cross and chain. However, defendant disputed plaintiff's property damage claim. Defendant also disputed plaintiff's submission of an insurance receipt. Defendant asserted the insurance receipt had been altered and did not represent evidence establishing the value of the cross and chain. The trier of fact agrees. Defendant contended since plaintiff has not offered sufficient evidence in regard to the actual value of the lost property, defendant has maintained plaintiff's damages for the loss should be limited to \$20.00, the institution value restriction for a cross and chain.

{¶ 4}4) Plaintiff related his son, Kevin M. Scudder, can and will confirm the purchase price of the cross and chain, which plaintiff set at \$73.11. Plaintiff further related Reverend Bernard Schmalzried can and will confirm the purchase price of the cross and chain. Plaintiff did not file any statements either from his son or from Reverend Schmalzried. Plaintiff stated he provided defendant with a sales receipt for the cross and chain. The file is devoid of any sales receipt.<sup>2</sup>

{¶ 5}5) Defendant, on August 5, 2005, filed a document captioned "Reply to Response to Investigation Report." There are no procedural mechanisms available under statute or local rules to accept this type of filing. Therefore, the document is regarded as an improper filing and is stricken.

#### CONCLUSIONS OF LAW

{¶ 6}1) Negligence on the part of defendant has been shown in respect to all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 7}2) The assessment of damages is a matter within the

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<sup>2</sup> Plaintiff filed a response requesting to amend his damage claim to \$73.11 for property loss, plus \$25.00 for filing fee reimbursement.

province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 8}3) Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only 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.

{¶ 9}4) The court finds defendant liable to plaintiff in the amount of \$20.00, 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.

IN THE COURT OF CLAIMS OF OHIO

KEVIN P. SCUDDER	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05345-AD
MANSFIELD CORRECTIONAL INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
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 \$45.00, 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:

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For Defendant

RDK/laa  
8/4  
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