

[Cite as *Forester v. Southeastern Correctional Inst.*, 2004-Ohio-4137.]

IN THE COURT OF CLAIMS OF OHIO

JOHN W. FORESTER :
Plaintiff :
v. : CASE NO. 2003-11925-AD
SOUTHEASTERN CORR. INST. : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On or about March 4, 2003, employees of defendant, Southeastern Correctional Institution (SCI), packed and inventoried property in the possession of plaintiff, John W. Forester, an inmate. SCI staff took control of these property items as part of an investigation into charges that plaintiff was involved in prohibited activities; running a business manufacturing and selling greeting cards and engaging in the unauthorized practice of law. According to defendant, the articles of property seized from plaintiff's possession were separated into two categories: permissible property and contraband. Defendant related all property items deemed permissible were returned to plaintiff. The remainder of the confiscated property was classified as contraband. Defendant explained plaintiff was given the option of either mailing the contraband from SCI or authorizing the destruction of the contraband items.

{¶2} 2) Plaintiff has asserted SCI personnel either lost or improperly destroyed multiple items of property confiscated on March 4, 2003. Plaintiff related the following articles were lost, missing or destroyed: 1800 pages of legal work; 600 sheets of art work; 2300 sheets of cardboard, paper, and plastic; various markers, chalks, paints, and brushes; 4 legal books; a book of legal forms; a Casio calculator; a Sentry radio/cassette player; 3 cassette tapes; 2 packs of batteries; and a Casio wrist watch. Consequently, plaintiff filed this complaint seeking to recover \$749.78, the estimated value of the alleged lost or destroyed property. Plaintiff implied he was the rightful owner of all property items represented in this claim. Plaintiff was excused from paying the requisite material filing fee.

{¶3} 3) Defendant submitted evidence establishing plaintiff authorized the mailing out of several articles from SCI on April 24, 2003. These items included legal work, legal books and forms, art supplies, and various cards. It is presumed the items were mailed to an address designated by plaintiff. In respect to any other legal material not covered by the April 24, 2003 mailing, defendant denied liability for the loss or destruction of any legal material claimed by plaintiff. Defendant denied taking possession of 1800 pages of legal papers which plaintiff claimed were confiscated on March 4, 2003. Defendant asserted there is no record plaintiff was the proper owner of 1800 pages of legal papers. Defendant admitted SCI staff confiscated, "legal papers of other inmates, DRC forms and legal forms available free of charge from the defendant's inmate law library." Defendant contended plaintiff had no rightful ownership interest in the above described articles. Additionally, defendant denied losing or destroying law books and legal form books actually owned by plaintiff. Plaintiff's books were mailed from SCI on or about April 24, 2003.

Defendant acknowledged taking other legal books from plaintiff's possession. Defendant asserted these books actually belonged to the SCI law library and were not owned by plaintiff. Defendant denied any liability for the loss of any legal material including papers, books, forms, and form books claimed by plaintiff.

{¶4} 4) Furthermore, defendant denied any liability for the alleged loss of multiple property items generally characterized as art supplies. Defendant argued plaintiff has failed to prove he was deprived of owning art supplies at SCI. Defendant admitted seizing art supplies from plaintiff on March 4, 2003. These art supplies were classified as contraband, "because plaintiff had used them to operate an unauthorized greeting card business." Defendant stated plaintiff was given the opportunity to authorize mailing the contraband art supplies from SCI. Defendant related plaintiff chose to have the art supplies mailed. Defendant implied all art supplies taken on March 4, 2003, were subsequently mailed from SCI.

{¶5} 5) Also, defendant denied any liability for the alleged loss of other property claimed by plaintiff: a Casio calculator, batteries, a Sentry radio/cassette player, 3 cassette tapes, and a Casio wrist watch. Defendant explained a Casio calculator was taken from plaintiff on March 4, 2003. It was discovered the calculator was owned by the SCI education department and not by plaintiff. Defendant denied receiving delivery of any batteries owned by plaintiff. Defendant acknowledged packing a radio, 2 cassette tapes, and a watch apparently owned by plaintiff on March 4, 2003. A property inventory of plaintiff's property, dated April 8, 2003, does not list any cassette tapes, radio, or watch. Plaintiff signed the April 8, 2003 inventory, certifying the listed items represented a complete and accurate accounting of his property. Although defendant did not offer any explanation concerning the disposition of plaintiff's watch, cassette tapes,

and radio, defendant has denied liability for the loss of these articles, which seemingly disappeared while under the control of SCI staff.

{¶6} 6) On March 30, 2004, plaintiff filed an extensive response to defendant's investigation report. Plaintiff argued his legal papers, books, art supplies, and card stock were not mailed from SCI to a person identified by plaintiff as Sydney G. Small. Plaintiff contended his property was either lost or destroyed. Plaintiff related postage costs for property mailed from SCI amount to \$6.90. Plaintiff professed his property designated for mailing was too heavy to be mailed for \$6.90. Plaintiff suggested defendant supplied the court with false documents to support its defense. Plaintiff submitted a signed statement from Sydney G. Small, who asserted he did not receive a package from SCI containing plaintiff's art materials and legal papers. The trier of fact does not find the assertions of plaintiff and Sydney G. Small particularly persuasive.

CONCLUSIONS OF LAW

{¶7} 1) 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. In the instant claim, plaintiff failed to offer sufficient proof he owned certain legal papers, books, and other items such as a calculator. Consequently, plaintiff's damage claim for these articles is denied.

{¶8} 2) 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.

{¶9} 3) 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.

{¶10} 4) Plaintiff's failure to prove delivery of certain property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶11} 5) 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.

{¶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* (1965), 176 Ohio St. 61.

{¶13} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss in regard to mailed property or other property as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶14} 8) Negligence has been shown in respect to the loss of a radio, watch, and cassette tapes. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶15} 9) The assessment of damages is a matter within the

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

{¶16} 10) 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.

{¶17} 11) The court finds defendant liable to plaintiff in the amount of \$20.00.

{¶18} 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 \$20.00. 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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6/16

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