

[Cite as *Hightower v. Marion Correctional Inst.*, 2004-Ohio-3493.]

IN THE COURT OF CLAIMS OF OHIO

WILLIE HIGHTOWER :
Plaintiff :
v. : CASE NO. 2004-01303-AD
MARION CORRECTIONAL INST. : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Willie Hightower, an inmate incarcerated at defendant, Marion Correctional Institution (MCI), stated he painted a portrait for sale and took the portrait to the institution Recreation Office for display. Plaintiff related he delivered the portrait to an MCI employee, identified as Cory Blankenship. Plaintiff explained he wanted to sell the portrait for \$125.00.

{¶2} 2) According to plaintiff, an inmate identified as Tommy E. Clyburn stole the portrait. Plaintiff asserted when inmate Clyburn was subsequently released on August 11, 2003, he was permitted to take the stolen portrait with him.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$900.00. Plaintiff submitted the requisite filing fee.

{¶4} 4) Defendant admitted MCI personnel "accidentally mailed plaintiff's painting to another inmate's home address." Defendant admitted liability for the loss of plaintiff's property and acknowledged damages in the amount of \$125.00, the sale price of

the portrait set by plaintiff. Defendant denied plaintiff suffered any damages above the set sale price of the portrait.

{¶5} 5) Plaintiff filed a response insisting his painting was worth at least \$900.00. Plaintiff submitted photographic evidence depicting other paintings he created. These photographs clearly show the high quality of plaintiff's artistic talent.

CONCLUSIONS OF LAW

{¶6} 1) I find, by a preponderance of the evidence, 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.

{¶7} 2) The standard measure of damages for personal property loss is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40.

{¶8} 3) In a situation where a damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original cost, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282.

{¶9} 4) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 87-04909-AD.

{¶10} 5) Evidence indicates to the trier of fact that plaintiff has suffered damages for the destruction of his skillfully crafted property. See *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶11} 6) Plaintiff has suffered damages in the amount of \$300.00, 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.

{¶12} 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 \$325.00, 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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