

[Cite as *Tyson v. Ohio State Penitentiary*, 2004-Ohio-5130.]

IN THE COURT OF CLAIMS OF OHIO

DENNIS J. TYSON :
Plaintiff :
v. : CASE NO. 2004-01371-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Dennis J. Tyson, an inmate incarcerated at defendant, Ohio State Penitentiary (OSP), asserted his astrology book was lost while under the control of OSP staff. Consequently, plaintiff filed this complaint seeking to recover \$78.00, the estimated replacement cost of this particular book. The requisite material filing fee was paid.

{¶ 2} 2) Defendant admitted liability for plaintiff’s loss, but disputed the damage claim. Defendant submitted evidence establishing the astrology book can be purchased for \$40.00 or less.

{¶ 3} 3) On July 27, 200, plaintiff filed a response to defendant’s investigation report. Plaintiff insisted his particular astrology book was worth \$78.00. Other than his assertion plaintiff has not produced evidence to show the book he owned had a replacement value of \$78.00.

{¶ 4} CONCLUSIONS OF LAW

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

{¶ 6} 2) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶ 7} 3) Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. 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.

{¶ 8} 4) The court finds defendant liable to plaintiff in the amount of \$40.00, 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.

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CASE NO. 2004-01371-AD

OHIO STATE PENITENTIARY :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

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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 plaintiff in the amount of \$65.00, 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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Youngstown, Ohio 44505-4635

Plaintiff, Pro se

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For Defendant

DRB/RDK/laa
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