

[Cite as *Pasco v. Ohio State Penitentiary*, 2004-Ohio-4821.]

IN THE COURT OF CLAIMS OF OHIO

THOMAS PASCO :
Plaintiff :
v. : CASE NO. 2004-02512-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) On or about October 29, 2003, plaintiff, Thomas Pasco, an inmate, was transferred from defendant, Ohio State Penitentiary (OSP), to the Belmont Correctional Institution (BeCI).

{¶2} 2) Plaintiff has claimed that several items of his personal property were not transferred to BeCI and were presumed lost while under the control of OSP personnel. Plaintiff related the following items are missing: a radio/cassette player, a set of headphones, a television set, a fan, two cassette tapes, games and game pieces, various articles of clothing, and assorted photographs contained in two albums.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$500.00 for his photographs, \$428.49 for the remaining property, \$250.00 for assistance in preparing his claim, and \$25.00 for filing fee reimbursement. Plaintiff's total damage claim amounts to \$1,203.49. The requisite material filing fee was paid. The claim for assistance in preparing this action is not a recognizable

element of damages and is therefore denied. The issue shall not be further addressed.

{¶4} 4) Defendant admitted liability for the loss of all property items claimed. However, defendant disputed plaintiff's damage request. Defendant related it "has no objection to an award of damages in this case in an amount reflective," of the loss sustained.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 2) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶7} 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.

{¶8} 4) The court finds defendant liable to plaintiff in the amount of \$475.00, 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

THOMAS PASCO :

Plaintiff :

v. : CASE NO. 2004-02512-AD
OHIO STATE PENITENTIARY : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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 \$500.00, 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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Plaintiff, Pro se

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RDK/laa
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