

[Cite as *Mumm v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5134.]

IN THE COURT OF CLAIMS OF OHIO

JAMES MUMM :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-04574-AD
 :
 OHIO DEPARTMENT OF : MEMORANDUM DECISION
 REHABILITATION AND CORRECTION,
 et al. :
 :
 Defendants :

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{¶ 1} On April 17, 2002, employees of the Adult Parole Authority (APA), incident to a criminal investigation, searched the residence of plaintiff, James Mumm and seized several items of personal property. The seized property included a camera, one poster, one blue spiral notebook, one address book, and multiple pages of handwritten notes. Additionally, APA agents removed several 3 X 5 photographs depicting plaintiff's former girlfriend in various nude poses. All confiscated property remained in the custody of the APA.

{¶ 2} On April 13, 2004, plaintiff filed this complaint alleging APA officers destroyed the confiscated photographs and failed to return the remaining seized property items. Plaintiff sought damages in the amount of \$1,000.98¹ for the loss of destroyed and unreturned property. Plaintiff's damage claim also listed property items which were not seized by APA officers from his residence. These items included a wallet containing credit cards and identification, one cell phone, one cassette tape, and one key ring with keys. On April 12, 2004, APA released the confiscated camera, poster, notebook, address book, and handwritten notes to an individual identified as Loretta Robbins. Loretta Robbins executed a form acknowledging receipt of plaintiff's property from APA. Evidence

¹ The \$25.00 filing fee was paid.

has shown APA staff destroyed the seized photographs pursuant to a request by plaintiff's former girlfriend, the subject of all the destroyed photographs.

{¶ 3} Plaintiff asserted he was the sole exclusive owner of the photographs depicting his former girlfriend and therefore, he alone held all rights in the disposition of the images. Plaintiff related his former girlfriend consented to be photographed and gave him permission to possess the photographs. Plaintiff did not submit any evidence to establish his former girlfriend ceded her property interest in the photographs. Plaintiff did not produce any evidence to establish the photographs were obtained as a gift or through a contractual transaction. The fact plaintiff's former girlfriend consented to be photographed does not prove plaintiff rightfully owned the photographic prints. Also, the fact plaintiff was in possession of the photographs does not prove ownership. On August 13, 2004, plaintiff filed an untimely response which did not contain any persuasive evidence to prove plaintiff was the owner of the destroyed photographs.

{¶ 4} Plaintiff has no right to pursue a claim for destroyed, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the destroyed photographs in question were the sole property of plaintiff's girlfriend. Plaintiff, at best, acted in the capacity of a bailee in regard to the photographs. Since plaintiff did not maintain any ownership right in the photographs he has no right to pursue an action for damages based on the destruction of property he did not own.

{¶ 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. 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. Plaintiff has failed to prove he suffered any property loss in relation to any property seized by APA and returned to Loretta Robbins.

{¶ 6} Plaintiff's failure to prove APA received delivery of additional property items

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction

For Defendant

DRB/RDK/laa
8/18
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