

[Cite as *Wiley v. Noble Correctional Inst.*, 2004-Ohio-5137.]

IN THE COURT OF CLAIMS OF OHIO

PAUL WILLEY :
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 Plaintiff :
 :
 v. : CASE NO. 2004-04914-AD
 :
 NOBLE CORRECTIONAL : MEMORANDUM DECISION
 INSTITUTION :
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 Defendant :
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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Paul Willey, an inmate incarcerated at defendant, Noble Correctional Institution (NCI), alleged that two NCI employees entered his cell on February 27, 2004, and confiscated three photographs and a letter. Plaintiff identified the two employees as C.O. Gillman and C.O. Elliot. Neither Elliot nor Gillman charged plaintiff with possession of contraband in connection with any property confiscation. Defendant does not have a record of any contraband items being confiscated from plaintiff’s cell on February 27, 2004.

{¶ 2} 2) Plaintiff submitted a statement from a fellow inmate, Eric Nelson, who maintained he saw C.O. Elliot and C.O. Gillman exiting plaintiff’s cell carrying plaintiff’s personal property. Nelson also noted he saw Elliot and Gillman throw plaintiff’s property on the floor.

{¶ 3} 3) Plaintiff related his photographs and letters were never returned to his possession. Consequently, plaintiff filed this complaint asserting he suffered damages in the amount of \$2,500.00 for emotional distress in regard to the loss of his property. Plaintiff was excused from paying the requisite material filing fee.

{¶ 4} 4) Defendant denied any NCI employees confiscated photographs from plaintiff’s cell. According to defendant, NCI employee C.O. Elliot acknowledged he confiscated a pouch of tobacco, rolling papers, and a book of matches from plaintiff’s cell on February 27, 2004. Defendant

stated C.O. Elliott claimed he classified the confiscated items as contraband and issued plaintiff a conduct report for possession of contraband. Furthermore, defendant professed C.O. Elliott denied taking any letters or any photographs from plaintiff's cell. Defendant did not submit a statement from C.O. Elliot regarding his participation in a search of plaintiff's cell on February 27, 2004. Defendant alleged that C.O. Gillman claimed he was not present in plaintiff's cell on February 27, 2004, and was therefore not involved in any confiscation of plaintiff's property. Defendant did not submit a statement from C.O. Gillman.

{¶ 5} 5) Although, C.O. Elliot allegedly claimed to have confiscated contraband and issued a conduct report for contraband possession as a result of the search of plaintiff's cell, no confiscated property was found and no record of a conduct report was located. Additionally, defendant explained recorded video of the events of February 27, 2004 were reviewed. This video record includes footage of C.O. Elliot exiting plaintiff's cell carrying something in his left hand.

{¶ 6} 6) After review of the evidence in the claim file, the trier of fact finds defendant's employee confiscated property from plaintiff's cell on February 27, 2004. This confiscated property was not formally classified as contraband and was lost, stolen, or destroyed while under defendant's control. Plaintiff's assertion that the confiscated property included photographs and a letter is persuasive.

CONCLUSIONS OF LAW

{¶ 7} 1) Plaintiff's claim for "mental stress" is denied. The court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271.

{¶ 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) An inmate plaintiff may recover the value of confiscated property destroyed by

agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

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

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

{¶ 13} 7) 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 a 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.

{¶ 14} 8) Defendant is liable to plaintiff in the amount of \$10.00.

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NOBLE CORRECTIONAL :
INSTITUTION :

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 \$10.00. 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:

Paul Willey
140 E. Main St., Apt. A
St. Clairsville, Ohio 43950

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

RDK/laa
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