

[Cite as *Thompson v. Ohio State Penitentiary*, 2005-Ohio-1394.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES LEE THOMPSON :
Plaintiff :
v. : CASE NO. 2004-10302-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On or about June 25, 2004, plaintiff, Charles Lee Thompson, an inmate, was transferred from the Southern Ohio Correctional Facility ("SOCF") to defendant, Ohio State Penitentiary ("OSP"). Plaintiff's personal property, which had been in storage at SOCF, was also transferred to OSP.

{¶ 2} 2) Plaintiff related he originally packed his property on or about April 5, 2004, when he was incarcerated at Warren Correctional Institution ("WCI"). Plaintiff further related he was transferred from WCI to SOCF on April 5, 2004, and remained at SOCF until June 25, 2004. Plaintiff asserted he did not have access to his property during the time period he spent at SOCF. According to plaintiff, when he regained possession of his property after being transferred to OSP, he discovered his headphones, watch, harmonica, and three cassette tapes were not among the returned items.

{¶ 3} 3) Consequently, plaintiff filed this complaint seeking to recover \$109.00, the estimated replacement cost of his alleged missing property. Plaintiff contended his property was lost or stolen while under the control of defendant's personnel. Plaintiff

was not required to pay the \$25.00 filing fee. Plaintiff requested an additional \$100.00 "for inconvenience." Inconvenience attendant to property loss is not a recognizable element of damages. The issue of inconvenience shall not be further addressed. Plaintiff's damage claim is limited to the stated replacement cost of his alleged lost property, \$109.00.

{¶ 4} 4) Plaintiff submitted a copy of his property inventory compiled incident to his April, 2004 transfer from WCI to SOCF. Listed on this inventory are a set of headphones, a watch, a harmonica, and eight cassette tapes. Plaintiff submitted an additional inventory compiled at SOCF on April 8, 2004. This inventory lists a set of headphones, a watch, a harmonica, and eight cassette tapes. Plaintiff recalled he did not have access to any of his property while he was housed at SOCF. Finally, plaintiff submitted a third inventory compiled when he arrived at OSP on June 25, 2004. This inventory does not list any headphones, watch, or harmonica. Five cassette tapes are listed.

{¶ 5} 5) Defendant denied any of plaintiff's property was lost while under the control of its personnel. Defendant asserted plaintiff has failed to provide sufficient evidence to prove he suffered property loss. Defendant denied receiving delivery of plaintiff's watch, harmonica, and three cassette tapes. Defendant stated, "[i]f Inmate Thompson, or the institution, can submit a copy of a pack-up slip dated June 21st or 22nd of 2004, which documents that property claimed as missing was packed up for transfer, there may be a basis for sustaining his claim."

{¶ 6} 6) Plaintiff countered that if he had a copy of a pack-up slip dated June 21, 2004, or June 22, 2004, he would have included the document with his complaint. Plaintiff recalled he was never given a property pack-up slip for his transfer to OSP. However, plaintiff has contended the property pack-up slips he provided

should be sufficient to prove his claimed property items were lost or stolen while under the control of Department of Rehabilitation and Correction personnel.¹

CONCLUSIONS OF LAW

{¶ 7} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶ 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) 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.

{¶ 11} 5) In order to recover against a defendant in a tort action, if plaintiff produces evidence which furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 12} 6) The credibility of witnesses and the weight

¹ Plaintiff filed a response to defendant's investigation report on January 31, 2005.

attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61.

{¶ 13} 7) 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.

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

{¶ 15} 9) 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.

{¶ 16} 10) The court finds defendant liable to plaintiff in the amount of \$109.00.

IN THE COURT OF CLAIMS OF OHIO

CHARLES LEE THOMPSON	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10302-AD
OHIO STATE PENITENTIARY	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>

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 \$109.00. 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:

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