

[Cite as *Ross v. Ohio Dept. of Youth Serv.*, 2006-Ohio-333.]

IN THE COURT OF CLAIMS OF OHIO

DUSTIN ROSS :
 :
 Plaintiff :
 :
 v. : CASE NO. 2005-04357-AD
 :
 DEPARTMENT OF YOUTH SERVICES : MEMORANDUM DECISION
 :
 Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Dustin Ross, is a youth offender under the custody of defendant, Department of Youth Services ("DYS") incarcerated at the Marion Juvenile Correctional Facility ("MaJCF"). Plaintiff stated MaJCF staff searched his housing unit on January 25, 2005, and confiscated several items of his personal property. Plaintiff maintained the confiscated items were subsequently discarded. Consequently, plaintiff filed this complaint seeking to recover \$116.00, the estimated value of the confiscated property. Plaintiff related the property MaJCF personnel threw away included sixteen photographs, five letters, about one hundred fifty documents, assorted hygiene items, four decks of cards and three photo albums.

{¶ 2} 2) Defendant acknowledged that MaJCF staff entered plaintiff's housing area, conducted a unit search, and "items from (plaintiff's) room were accidentally thrown away." However, defendant denied any liability in this matter. Defendant denied plaintiff sustained any damages when his property was thrown away by MaJCF personnel. Defendant is unaware regarding what type of

property was thrown away and what the discarded property was worth.

CONCLUSIONS OF LAW

{¶ 3} 1) This court has previously observed "R.C. 5139.01(A)(3) expressly provides that '*** the department [of youth services] has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control *** the children over which defendant maintains legal custody.'" *Shover v. Ohio Dept. of Youth Serv.* (Sept. 14, 1994), Court of Claims No. 93-04176. R.C. 5139.01(A)(3) also mandates defendant "provide the child with food, clothing, shelter, education, and medical care." Implied in this statutory duty to protect is the duty to protect the permissible personal property belonging to an incarcerated youth.

{¶ 4} 2) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the Department of Rehabilitation and Correction does not have the liability of an insurer, with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property. Furthermore, the Department of Rehabilitation and Correction has a duty of using the same degree of care with inmate property as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD. The court concludes, in the instant claim, defendant has the same duty of care to the property of youth offenders under its custody that the Department of Rehabilitation and Correction owes to incarcerated inmates.

{¶ 5} 3) 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.

{¶ 6} 4) Negligence by defendant has been shown. *Baisden v.*

Southern Ohio Correctional Facility (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶ 7} 5) 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.

{¶ 8} 6) 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.

{¶ 9} 7) The standard measure of damages for personal property loss is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40.

{¶ 10} 8) In a situation where a damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original cost, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282.

{¶ 11} 9) Plaintiff has suffered damages in the amount of \$50.00.

IN THE COURT OF CLAIMS OF OHIO

DUSTIN ROSS :
Plaintiff :
v. : CASE NO. 2005-04357-AD

DEPARTMENT OF YOUTH SERVICES : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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

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 \$50.00. 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:

Dustin Ross
1012 ODNR Mohican 51
Perrysville, Ohio 44864

Plaintiff, Pro se

Thomas J. Stickrath, Director
Department of Youth Services
51 North High Street
Columbus, Ohio 43215

For Defendant

RDK/laa
1/11
Filed 1/18/06
Sent to S.C. reporter 1/27/06