

segregation unit at MCI and his personal property was delivered into the custody of MCI personnel. Plaintiff claimed his two jersey t-shirts, two pairs of dress shorts, two pairs of sweats, and two pairs of thermal underwear were not packed when he was sent to segregation. Plaintiff asserted these property items valued at \$170.00 were lost or stolen by MCI employees.

{¶ 3} 3) On May 31, 2004, plaintiff again was transferred to a segregation unit at MCI. Plaintiff claimed several items of his personal property came up missing incident to his transfer to the MCI segregation unit. Plaintiff related three pairs of shoes, a silk pajama set, seven cassette tapes, six pairs of silk underwear, six pairs of cotton boxer shorts, thermal underwear, five books, headphones, socks, washcloths, and miscellaneous commissary items were missing. Plaintiff valued these articles at \$1,283.00. Plaintiff contended MI personnel were responsible for the loss of his property.

{¶ 4} 4) On October 8, 2004, while plaintiff was incarcerated at defendant's Toledo Correctional Institution ("ToCI"), plaintiff's radio was confiscated because the device had an impermissible record feature. The radio was taken to the ToCI electrical shop and a technician disconnected the record feature. The radio was then returned to plaintiff, who complained the device was broken beyond repair by ToCI electric shop personnel. Plaintiff maintained his radio valued at \$85.00 was rendered totally nonfunctional. Also, plaintiff related he was transferred to a segregation unit on October 8, 2004, and several items of his personal property were missing after his property was supposedly secured by ToCI staff. Plaintiff noted

his blanket, two towels, three washcloths, three pairs of boxer shorts, and assorted commissary items were missing from his packed property delivered to defendant. Plaintiff valued these items at \$180.00.

{¶ 5} 5) Furthermore, plaintiff claimed his television set was broken on January 19, 2005, in transport from ToCI to the Ross Correctional Institution ("RCI"). Plaintiff stated the television set had a replacement value of \$175.00.

{¶ 6} 6) Plaintiff filed this complaint seeking to recover \$2,500.00, the statutory maximum amount recoverable in a claim of this type. Plaintiff contended his vast amount of property was damaged, lost, or stolen at various times as a proximate cause of negligence on the part of defendant's employees.

{¶ 7} 7) Defendant argued any claim plaintiff may have concerning damage to his watch is barred by the two-year statute of limitations promulgated in R.C. 2743.16. Plaintiff's cause of action regarding his watch accrued more than two years prior to the filing of this complaint.

{¶ 8} 8) Defendant denied any liability for any alleged property loss occurring on or about February 2, 2004, and January 8, 2004, at MCI. Defendant explained plaintiff was issued a conduct report on January 8, 2004, for possession of contraband. The declared contraband items, which were confiscated, included an altered fan, towel, and sixteen cassette tapes. On February 2, 2004, plaintiff was transferred to a segregation unit and his property was delivered into defendant's custody. Initially, after receiving custody of plaintiff's property, defendant claimed several items were

confiscated as contraband, including two thermal shirts, seven t-shirts, and two pairs of shorts. Defendant related all property articles confiscated, with the exception of excess state issue sheets and blankets, were subsequently returned to plaintiff. On April 8, 2004, plaintiff reported the theft/loss of two jersey t-shirts, two pairs of shorts, two sweat shirts, and one pair of thermal underwear. Defendant has submitted evidence showing clothing items were confiscated from plaintiff on December 10, 2004, and subsequently destroyed pursuant to an authorized forfeiture order issued by the Marion County Court of Common Pleas.

{¶ 9} 9) Evidence has shown plaintiff was transferred to a security control unit at MCI on May 31, 2004, and his personal property was packed by defendant's employees. Defendant explained three pairs of shoes, books, headphones, socks, wash cloths, underwear, seven cassette tapes, assorted commissary items, and other property were confiscated from plaintiff's possession and declared contraband. Defendant claimed plaintiff received a conduct report for contraband possession. Defendant did not include a copy of the conduct report issued on or about May 31, 2004. Defendant seemingly acknowledged the items declared contraband on or about May 31, 2004, were subsequently destroyed. Defendant did not submit any documents granting authorization to dispose of contraband seized on or about May 31, 2004. Defendant contended plaintiff failed to offer any proof he legitimately possessed the items confiscated on or about May 31, 2004, and subsequently destroyed. Defendant submitted a copy of plaintiff's property inventory compiled on

May 31, 2004. Various items are listed under a heading, CONTRABAND. Items listed under this heading include papers, chess set, chips, lotions, bowl, shampoo, shoes (three pairs), 7 tapes, 8 washcloths, 4 pair of socks, 2 clips, pops, pajamas, t-shirts, shirts, and other items the trier of fact cannot reasonably determine given the condition of the submitted document.

{¶ 10} 10) Defendant confirmed losing certain items of plaintiff's personal property when he was transferred to a segregation unit on October 8, 2004. Defendant acknowledged two towels, three washcloths, and three pairs of boxer shorts were lost by ToCI staff. Defendant admitted liability in the amount of \$31.49 for these items. Conversely, plaintiff valued the items at \$125.00. Defendant denied losing any commissary items arguing, "there are no commissary slips to support plaintiff purchased commissary items he claims in the complaint." Defendant contended plaintiff failed to produce evidence establishing he owned a blue blanket which he claimed was lost on or about October 8, 2004. Defendant produced a copy of plaintiff's property inventory dated February 24, 2004, that does not list a blanket. Plaintiff possessed two blankets on February 2, 2004, which were listed as contraband. Defendant reasoned since plaintiff did not possess a blanket on February 24, 2004, he probably did not possess a blanket on October 8, 2004. Defendant denied liability for any loss of a blanket. Additionally, defendant denied ToCI personnel damaged plaintiff's radio. Defendant explained plaintiff's radio was discovered to "have an operational recording feature, a feature

not permitted by inmates to possess on their personal radios." Defendant related plaintiff allowed a ToCI electrical technician to disconnect the recording feature and the radio was returned to plaintiff with the recording capability inhibited, but with all other features operational. On October 15, 2004, about a week after the recording feature was disconnected, plaintiff complained to ToCI staff his radio was broken. Defendant suggested plaintiff tampered with the radio himself in an attempt to reconnect the recording capability on the device. Defendant denied damaging the radio. ToCI electric technician, A. Palacios, stated he "disabled the recording function" on the radio, but noted, "other functions and components of the radio were still operational."

{¶ 11} 11) Furthermore, defendant argued plaintiff has failed to prove his television set was damaged when the set was transferred from ToCI to RCI on January 20, 2005. Defendant maintained no evidence of damage has been produced.

{¶ 12} 12) In his response to defendant's investigation report, plaintiff insisted his fan was not altered and MCI staff destroyed the fan without obtaining proper authorization. Some evidence in the form of a Conduct Report, has been submitted to show the fan was altered; "it appears the name and number has been tampered with." Plaintiff denied any of defendant's personnel returned property to him which had initially been declared contraband. Plaintiff did not submit any evidence to establish his radio and television set were damaged by defendant's employees.

CONCLUSIONS OF LAW

{¶ 13} 1) R.C. 2743.16(A) states:

{¶ 14} "(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

{¶ 15} Taking plaintiff's evidence in the best light, his cause of action for the damage to his watch occurred in December, 2000 or January, 2001. Plaintiff filed this complaint on May 11, 2005, more than four years after his cause of action accrued. Plaintiff's claim for the damage to his watch is barred by R.C. 2743.16(A), the statute of limitations for filing in this court. Any claim involving damage to plaintiff's watch is dismissed.

{¶ 16} 2) 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.

{¶ 17} 3) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence 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.

{¶ 18} 4) Plaintiff has failed to prove a causal connection between the damage to his television set and radio and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD. The claims for damage to a television and radio are denied.

{¶ 19} 5) The state cannot be sued for the exercise of any executive or planning function involving the making of a policy decision characterized by the use of a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68.

{¶ 20} 6) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Plaintiff has failed to produce any evidence to show his radio was damaged when the impermissible recording function on the device was disconnected by defendant's employee. Plaintiff failed to prove the radio was rendered totally nonfunctional by defendant.

{¶ 21} 7) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any property loss which was the proximate result of any negligence on the part of defendant in regard to clothing items confiscated in February, 2004. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD. Some evidence has been provided to show shirts, shorts, and thermal underwear were returned to plaintiff after being confiscated by MCI staff on or about February 2, 2004. No evidence has been produced to prove plaintiff possessed sweats on February 2, 2004, or that sweats were

confiscated. Plaintiff's property inventory dated February 20, 2004, lists shorts, thermal underwear, and shirts.

{¶ 22} 8) Plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Radford v. Department of Rehabilitation and Correction* (1984), 84-09071. An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, 2005-05183-AD; jud, 2005-Ohio-4320. Consequently, plaintiff's claim for the fan, which was altered, is denied. In respect to the property items claimed missing on or about May 31, 2004, the trier of fact finds sufficient evidence has been presented to establish plaintiff legitimately owned these items and all items claimed were lost or misplaced at some period during 2004, while under the control of MCI personnel. Additionally, the trier of fact finds plaintiff has proven ToCI staff lost or misplaced all property items claimed as missing on or about October 8, 2004.

{¶ 23} 9) Negligence by defendant has been shown in respect to the loss of property claimed on May 31 and October 8, 2004. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶ 24} 10) 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.

{¶ 25} 11) 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.

{¶ 26} 12) Plaintiff has suffered damages in the amount of \$350.00.

IN THE COURT OF CLAIMS OF OHIO

MR. CALVIN L. BAILEY :

Plaintiff :

v. :

CASE NO. 2005-06597-AD

DEPARTMENT OF REHABILITATION AND CORRECTION :

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 \$350.00. 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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