

[Cite as *Roudebush v. N. Cent. Corr. Inst.*, 2006-Ohio-7235.]

IN THE COURT OF CLAIMS OF OHIO

DAVID ROUDEBUSH	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2005-10624-AD
	:	
NORTH CENTRAL CORRECTIONAL	:	<u>MEMORANDUM DECISION</u>
INSTITUTION	:	
	:	
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On June 22, 2005, employees of defendant, North Central Correctional Institution ("NCCI"), confiscated multiple items of personal property from plaintiff, David Roudebush, an inmate incarcerated at NCCI.

{¶ 2} 2) The confiscated property items were declared contraband and subsequently destroyed by NCCI staff. Defendant acknowledged the confiscated property was destroyed without having any prior court ordered authorization.

{¶ 3} 3) Plaintiff asserted the destroyed property included food stuffs, tobacco products, light bulbs, toiletries, envelopes, photographs, a cup, ointment, papers, legal materials, socks, books, shoe strings, game cards (magic), art supplies, magazines, drawings, and "education materials." Plaintiff stated the destroyed property was valued at \$1,824.41. Plaintiff filed this claim seeking to recover the value of his destroyed property. A filing fee was not required.

{¶ 4} 4) Defendant admitted NCCI personnel mistakenly destroyed property confiscated from plaintiff's possession. However, defendant disputes the amount of property destroyed and the value of the destroyed property claimed by plaintiff. Defendant admitted confiscating and subsequently destroying socks, books, a light bulb, tobacco product accessories, food stuffs, shoe strings, ointment, photographs, a cup, stencils, magazines, and drawings. Defendant denied confiscating and destroying other property from plaintiff such as game cards, art supplies, envelopes, legal materials, and papers. Plaintiff's property inventory dated June 22, 2005, lists "magic cards" were packed by defendant. Art supplies, legal materials, envelopes, and additional papers are not listed on this June 22, 2005, property inventory.

{¶ 5} 5) Plaintiff filed a response to defendant's investigation report. Plaintiff insisted all items claimed were destroyed by defendant's employees. Plaintiff provided documentation regarding replacement cost of all property claimed. The bulk of the items claimed consisted of depreciable property. Plaintiff has not submitted sufficient evidence to establish the value of his destroyed property.

CONCLUSIONS OF LAW

{¶ 6} 1) 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.

{¶ 7} 2) 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.

{¶ 8} 3) Furthermore, 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.

{¶ 9} 4) Negligence on the part of defendant has been shown in respect to all property documented as destroyed by NCCI staff. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 10} 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.

{¶ 11} 6) Plaintiff's failure to prove delivery of art supplies, such as colored pencils, to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD. Consequently, plaintiff's claims for these items are denied.

{¶ 12} 7) Plaintiff has failed to prove his personal photographs and magic cards were destroyed or lost while under defendant's control. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶ 13} 8) 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.

{¶ 14} 9) 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.

{¶ 15} 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.

{¶ 16} 11) 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.

{¶ 17} 12) The court finds defendant liable to plaintiff in the amount of \$200.00.

IN THE COURT OF CLAIMS OF OHIO

DAVID ROUDEBUSH :

Plaintiff :

v. :

CASE NO. 2005-10624-AD

NORTH CENTRAL 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 \$200.00. 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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For Defendant

RDK/laa

7/19

Filed 8/4/06

Sent to S.C. reporter 4/5/07