

[Cite as *Clark v. Ohio State Penitentiary*, 2006-Ohio-7277.]

IN THE COURT OF CLAIMS OF OHIO

DAVID CLARK	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2006-01327-AD
	:	
OHIO STATE PENITENTIARY	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	
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FINDINGS OF FACT

{¶ 1} 1) On July 25, 2006, this court issued an entry, whereby it considered a motion for recovery of costs to be filed in this case. However, on August 7, 2006, plaintiff submitted a letter indicating that he had erroneously captioned his motion for court review with the wrong case number, however, the motion to recover costs was purposely captioned in Case No. 2006-01319-AD. Accordingly, the court's entry of July 25, 2006, with respect to the motion to recover costs is vacated.

{¶ 2} 2) Plaintiff, David Clark, an inmate incarcerated at defendant, Ohio State Penitentiary ("OSP"), stated he was transferred to a segregation unit on or about May 12, 2005. Plaintiff explained he was permitted to possess certain property items while assigned to segregation, including a walkman and headphones. Therefore, according to plaintiff, he placed his walkman and headphones into his property pack-up he was permitted to have in segregation. Plaintiff assumed his permissible property was then taken to the OSP segregation block. Furthermore, plaintiff asserted he handed over his blue

"Dazzle" shorts to OSP employee Officer Mobly when he entered segregation. Plaintiff pointed out he was not permitted to possess the "Dazzle" shorts while he was assigned to segregation and he later discovered he was not allowed to keep his walkman and headphones during the time he was in segregation. The shorts and the walkman and headphones were supposedly stored in the OSP vault along with plaintiff's other storage property.

{¶ 3} 3) Plaintiff was subsequently released from segregation and regained possession of his stored property. Plaintiff stated that when he examined his returned property he noticed his headphones were broken and his "Dazzle" shorts were missing. Plaintiff contended his headphones were broken and his shorts were lost as a result of OSP staff mishandling his property during the time he was assigned to segregation. Plaintiff maintained he immediately reported the issues regarding his property loss to OSP personnel. Plaintiff filed this complaint seeking to recover \$58.91, the total replacement cost of his shorts and headphones. Plaintiff argued his property items were lost and damaged as a proximate cause of negligence on the part of defendant in exercising control over the items. The filing fee was paid.

{¶ 4} 4) Defendant initially denied ever receiving delivery of plaintiff's shorts when he entered segregation. Defendant contended plaintiff failed to provide sufficient evidence to establish the cause of the damage to his headphones. Defendant subsequently filed a supplemental investigation report admitting liability for plaintiff's loss and acknowledging he suffered

damages in the amount of \$58.91, plus the filing fee.

{¶ 5} 5) Plaintiff filed a response. In the response, he filed a motion to amend the prayer amount to include costs incurred filing his complaint.

CONCLUSIONS OF LAW

{¶ 6} 1) 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.

{¶ 7} 2) Plaintiff is not entitled to expenses related to the prosecution of his case. *Hamman v. Witherstrine* (1969), 20 Ohio Misc. 77, 252 N.E. 2d 196.

{¶ 8} 3) The court finds defendant liable to plaintiff in the amount of \$58.91, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

IN THE COURT OF CLAIMS OF OHIO

DAVID CLARK	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01327-AD
OHIO STATE PENITENTIARY	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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Plaintiff's motion to amend the prayer amount of his case is DENIED. 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 \$83.91, which includes the filing fee. 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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Plaintiff, Pro se

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For Defendant

Sent to S.C. reporter 6/5/07