

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

FREDERICK E. JOHNSON

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL
FACILITY

Defendant

Case No. 2006-01769-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On or about September 20, 2005, plaintiff alleges he was placed in disciplinary control at defendant, Southern Ohio Correctional Facility. Incident to his transfer to disciplinary control, defendant's agents packed all his property. Upon his release from isolation on September 28, 2005, plaintiff asserts he was only given three boxes containing his personal property rather than the four boxes which were packed. Plaintiff states the following personal property items were lost while under defendant's control: 24 Buglar tobacco pouches, four bags of coffee, eight boxes of Black & Mild cigars, 15 packs of cigarettes, one robe, two thermal sets, one pair of gym shoes, two pairs of pajamas, one clock, five cassette tapes, and one sweat suit. On February 6, 2006, plaintiff filed a complaint against defendant, Southern Ohio Correctional Facility alleging defendant's negligence resulted in the loss of his property. Plaintiff seeks damages in the amount of \$264.35, plus reimbursement of the filing fee he submitted with the complaint.

{¶ 2} On May 2, 2006, this court issued an entry requiring defendant to submit the investigation report within 14 days of the date of the entry.

{¶ 3} On May 26, 2006, plaintiff filed a motion for summary judgment based on defendant's failure to timely file the investigation report. Plaintiff filed his motion pursuant to Civ.R. 56.

{¶ 4} Civ.R. 56(C) in pertinent part states:

{¶ 5} "A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor."

{¶ 6} A review of plaintiff's pleadings and additional evidence attached to the pleadings reveals there is insufficient evidence to conclude that there is no genuine issue as to any material fact and plaintiff is entitled to summary judgment as a matter of law.

{¶ 7} Also, Civ.R. 55(D) in pertinent part states:

{¶ 8} "No judgment by default shall be entered against this state, . . . or agency . . . unless the claimant establishes his claim or right to relief by evidence satisfactory to the court."

{¶ 9} Plaintiff may not be granted summary or default judgment based solely on procedural errors made by the defendant.

{¶ 10} On June 28, 2006, defendant filed a motion for extension of time to submit the investigation report. On July 10, 2006, defendant filed the investigation report. While defendant asserts the evidence does not clearly support plaintiff's allegations concerning the personal property loss he suffered, defendant concedes that plaintiff did lose some property and admits liability and damages in the amount of \$100.00.

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{¶ 11} On July 20, 2006, plaintiff filed a response to defendant's investigation report. Plaintiff states he is willing to accept the \$100.00 for the loss of his personal property plus an additional \$25.00 for reimbursement of the filing fee.

{¶ 12} CONCLUSIONS OF LAW

{¶ 13} In respect to all loss claimed, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 14} 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.

{¶ 15} The court finds defendant liable to plaintiff in the amount of \$100.00, 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.

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ENTRY OF ADMINISTRATIVE
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 \$125.00, 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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P.O. Box 120
Lebanon, Ohio 45036

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
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For Defendant

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Columbus, Ohio 43229

RDK/laa

9/6

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