

was originally purchased by plaintiff's sister for \$69.99 in June, 1999. Plaintiff filed this complaint seeking to recover \$81.00 for the replacement cost of the radio/cassette player, plus \$419.00 for emotional distress. Plaintiff submitted a copy of a title for a Panasonic radio/cassette player, serial number 0755622, model number RX-FS470. The filing fee was waived.

{¶ 4} 4) Defendant denied any liability and suggested the Panasonic radio/cassette player was contraband property because there is no evidence in plaintiff's file to prove he obtained the device through approved means. Defendant noted plaintiff came to ManCI on March 20, 2000, and brought a Sony radio with him not a Panasonic radio/cassette player. Past property inventories compiled on three separate occasions in 2002, show plaintiff possessed a Sony radio. No Panasonic brand device is listed. Another inventory compiled on December 9, 2004, lists plaintiff possessing a Sony radio and a Panasonic cassette player. Plaintiff reported his Panasonic radio/cassette player was stolen on February 21, 2004.

{¶ 5} 5) Plaintiff responded to defendant's investigation report by insisting he was the rightful owner of the dismantled radio/cassette player that defendant confiscated and destroyed.

CONCLUSIONS OF LAW

{¶ 6} 1) This court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. *Galloway v. Department of Rehabilitation and Correction* (1979), 78-0731-AD; *Berke v. Ohio Dept. of Pub. Welfare* (1976), 52 Ohio App. 2d 271. Plaintiff's

claim for emotional distress is denied.

{¶ 7} 2) 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.

{¶ 8} 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.

{¶ 9} 4) 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.

{¶ 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. However, 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* (1985), 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; *Griffin v. Ohio Department of Corrections* (2006), 2005-08271-AD.

{¶ 11} 6) An inmate plaintiff is barred from pursuing a claim for the loss 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's claim for his altered radio/cassette player is denied.

IN THE COURT OF CLAIMS OF OHIO

JAMES L. WAVER :

Plaintiff :

v. :

CASE NO. 2006-02960-AD

OHIO DEPARTMENT OF CORRECTIONS :

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 defendant. Court costs are assessed against plaintiff. 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:

James L. Waver, #340-516
P.O. Box 8000
501 Thompson Road
Conneaut, Ohio 44030

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction

For Defendant

Case No. 2006-02960-AD

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MEMORANDUM DECISION

1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa

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