

[Cite as *Azan v. Ohio Dept. of Transp.*, 2006-Ohio-7192.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL-ANDRE AZAN :
 :
 Plaintiff :

v. :

CASE NO. 2005-10934-AD

OHIO DEPARTMENT OF :
 REHABILITATION AND CORRECTIONS :
 :
 Defendant :

MEMORANDUM DECISION

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On or about May 27, 2005, plaintiff, Michael A. Azan, an inmate incarcerated at defendant's Chillicothe Correctional Institution ("CCI"), was transferred to a segregation unit. Incident to this transfer, plaintiff's personal property was inventoried, packed, and delivered into the custody of CCI staff.

{¶ 2} 2) Sometime after plaintiff was placed in segregation his personal clothing, towels, and wash cloths were taken to the CCI laundry and washed. Plaintiff asserted the laundered items were placed back in storage without being properly dried and consequently, the laundered property was, "completely destroyed/damaged with mildew and mold."

{¶ 3} 3) Plaintiff maintained the following items were destroyed: one sweat shirt, one robe, five t-shirts, one long sleeve t-shirt, one dress shirt, three pairs of gym shorts, seven pairs of socks, seven pairs of boxer shorts, one knit cap, one thermal bottom, five towels, and four wash cloths.

{¶ 4} 4) Additionally, plaintiff claimed three typewriter ribbons and five typewriter printwheels were lost while under the control of CCI personnel. Plaintiff related the ribbons and printwheels were packed on May 27, 2005, and were placed in storage when he was transferred to segregation. Plaintiff further related three typewriter ribbons and five typewriter printwheels were not among his returned property when he was subsequently transferred to defendant's Lebanon Correctional Institution ("LeCI") on July 27, 2005.

{¶ 5} 5) Plaintiff filed this complaint seeking to recover \$15.00 for his typewriter ribbons and \$19.75 for five typewriter printwheels. Plaintiff also claimed damages of \$271.31, the estimated replacement cost of damaged clothing, towels, and wash cloths.

{¶ 6} 6) Defendant admitted liability for the loss of plaintiff's typewriter ribbons in the amount of \$15.00. Additionally, defendant admitted liability for the loss of plaintiff's clothing articles, towels, and wash cloths with the exception of one pair of gym shorts, two pairs of socks, one pair of boxer shorts, and two wash cloths. Defendant also disputed plaintiff's damage claim for his clothing, towels, and wash cloth. Defendant insisted these property items were depreciable property and were therefore, probably worth \$139.73. Defendant denied any liability for the loss of any typewriter printwheels. Defendant pointed out no printwheels were listed on plaintiff's property inventory when his property was packed at CCI (May 27, 2005) and no printwheels are listed on the inventory recorded at LeCI (July 27, 2005).

{¶ 7} 7) Plaintiff submitted three copies of property inventories dated May 26, 2005, May 27, 2005, and July 27, 2005. The May 26, 2005, and May 27, 2005, inventories were compiled at CCI. The May 26, 2005, inventory lists clothing items plaintiff was wearing and other property plaintiff possessed on his person when he was transferred to the CCI isolation unit. Relevant property items listed on this May 26, 2005, inventory include one t-shirt, one pair of gym shorts, one pair of undershorts, and one wash cloth. Other relevant property listed on another inventory compiled at CCI on May 27, 2005, include five t-shirts, one knit hat, one robe, two pairs of gym shorts, one thermal underwear bottom, five pairs of socks, five towels, six pairs of undershorts, two wash cloths, one dress shirt, one long sleeve t-shirt, and one sweat suit. The May 27, 2005, inventory lists six typewriter ribbons were packed. However, there is no indication CCI staff packed any typewriter printwheels since no printwheels are listed. Plaintiff signed this inventory acknowledging it as a complete and accurate compilation of his property. Plaintiff's July 27, 2005, property inventory compiled at LeCI lists typewriter accessories as well as three typewriter ribbons. Plaintiff suggests this July 27, 2005, listing of typewriter accessories actually connotes typewriter printwheels and constitutes proof he possessed typewriter printwheels on May 27, 2005, at CCI which were lost by CCI personnel. Plaintiff insisted defendant should bear liability for typewriter printwheels that are not specifically listed on any inventory.

{¶ 8} 8) In his response to defendant's investigation report submitted on February 17, 2006, plaintiff acknowledged he overstated the amount of socks and wash cloths that were damaged at the CCI laundry. Also, plaintiff acknowledged some of his damaged property should be subject to depreciation. Plaintiff stated he is willing to accept \$237.38 for his damaged clothing, towels, and wash cloths, as well as \$15.00 for typewriter ribbons, and \$119.75 for the loss of typewriter printwheels.

CONCLUSIONS OF LAW

{¶ 9} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶ 10} 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.

{¶ 11} 3) 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.

{¶ 12} 4) 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.

{¶ 13} 5) 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82

{¶ 14} 6) Plaintiff's failure to prove delivery of typewriter printwheels to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 15} 7) Negligence on the part of defendant has been shown in respect to all remaining property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 16} 8) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 17} 9) 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.

{¶ 18} 10) The court finds defendant liable to plaintiff in the amount of \$200.00 for property loss.

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MICHAEL-ANDRE AZAN :

Plaintiff :

v. :

CASE NO. 2005-10934-AD

OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS :

ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant :

: : : : : : : : : : : : : : : :

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:

Michael-Andre Azan, #335-790
P.O. Box 56
Lebanon, Ohio 45036-0056

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

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