

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

REX TALL, JR.

Plaintiff

v.

OHIO DEPT. OF CORR. AND REHAB.

Defendant

Case No. 2007-04486-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Rex Tall, Jr., an inmate incarcerated at defendant's North Central Correctional Institution (NCCI), stated that his fan and television set were confiscated by NCCI personnel on or about October 28, 2006 and November 11, 2006. The confiscated property items were declared contraband. Apparently, the television set was confiscated due to the fact plaintiff had loaned the set to his brother, a fellow inmate, an act prohibited by defendant's internal regulations.

{¶2} 2) Although the confiscated fan was ordered by defendant's inspector to be returned to plaintiff, plaintiff maintained the fan was never forwarded to him. Additionally, plaintiff recalled NCCI employee, Sgt. Hines, eventually returned a television set to him, but according to plaintiff, the returned television was not the same set that had been confiscated from him on November 11, 2006. Plaintiff explained that when he subsequently tried to locate the set he owned he was informed by an NCCI Lieutenant who worked at the institution property vault that his television "was destroyed/lost."

{¶3} 3) Plaintiff filed this complaint seeking to recover \$137.23, the total replacement cost of his television set and fan. Plaintiff contended that his property items were destroyed by defendant's employees without any authorization and therefore, defendant should be liability for the loss. Plaintiff provided evidence showing

that he purchased a 13" Zenith Color television set on or about December 14, 2005, for \$123.90. Plaintiff also submitted evidence showing that he purchased a fan from the NCCI commissary on June 6, 2006, for \$13.33. Plaintiff was not required to pay a filing fee to proceed with this action.

{¶4} 4) Defendant admitted liability for the loss of plaintiff's fan in the amount of \$12,99. Although defendant acknowledged plaintiff's television set was destroyed, defendant denied any liability for the property destruction. Defendant noted that plaintiff's television set was confiscated on November 12, 2006, while in the possession of an inmate identified as Gordon, plaintiff's brother. The confiscated television set was declared contraband and inmate Gordon was issued a conduct report for possession of contraband. Defendant pointed out that the confiscated television set was destroyed pursuant to a forfeiture order obtained from the Marion County Common Pleas Court. Defendant submitted a copy of the forfeiture order.

{¶5} 5) Plaintiff filed a response insisting that defendant had no authority to destroy his confiscated television set.

CONCLUSIONS OF LAW

{¶6} 1) 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.

{¶7} 2) However, in the instant claim, defendant acted with court ordered authority to destroy the confiscated television set. An inmate plaintiff is barred from recovering the value of confiscated property formally forfeited and subsequently destroyed pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for the destroyed confiscated television set is dismissed.

{¶8} 3) Negligence on the part of defendant has been shown in respect to the loss of the fan. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{19} 4) 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, 577 N.E. 2d 160. The court finds defendant liable to plaintiff in the amount of \$13.33.

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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 \$13.33. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

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