

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

ROBERT A. GALE

Plaintiff

v.

CHILLICOTHE CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-05873-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} Plaintiff, Robert A. Gale, an inmate incarcerated at defendant, Chillicothe Correctional Institution (“CCI”), asserted that multiple items of personal property he had in his possession were confiscated by CCI staff on or about August 25, 2006. According to plaintiff, the confiscated property included 46 compact discs, 32 cassette tapes, “mushfake” items, various articles of clothing, utensils, and books. Plaintiff stated the property was confiscated due to the fact that the amount of items he possessed exceeded the internal policy limitations for inmate property possession set by defendant. Plaintiff related he was issued “contraband tickets and over possession limits tickets for (‘mushfake’) items and (too) much personal property.” Plaintiff noted that of all the property CCI personnel seized, only the 46 compact discs, 32 cassette tapes, and “mushfake” items were stored in the CCI contraband vault.

{¶ 2} Plaintiff explained the 46 compact discs and 2 cassette tapes seized from him were subsequently destroyed by CCI staff. Plaintiff contended he was never given the opportunity to mail the compact discs and cassette tapes to his outside home address before these items were destroyed. Plaintiff observed defendant had no

authority to destroy the confiscated compact discs and cassette tapes. Consequently, plaintiff filed this complaint seeking to recover \$733.53, the estimated replacement value of the destroyed property items. Plaintiff also requested filing fee costs. The filing fee was paid.

{¶ 3} Plaintiff pointed out the cassette tapes and compact discs were seized while he was housed in a CCI segregation unit. Plaintiff recalled that when he was released from segregation on or about August 29, 2006, he attempted to retrieve his seized property but was denied any access. Plaintiff maintained he talked with the CCI Contraband Vault Officer on or about September 28, 2006, regarding the disposition of his seized property. Plaintiff related that two days after this conversation, on or about September 30, 2006, he discovered his cassette tapes and compact discs had been destroyed pursuant to a disposition of defendant's Rules Infraction Board ("RIB"). Defendant confirmed the confiscated cassette tapes and compact discs were indeed destroyed pursuant to a ruling of the RIB, apparently because plaintiff could not produce sufficient documentation of ownership of the seized compact discs and cassette tapes. Although plaintiff expressed the intention to authorize the mailing of the seized property to his home address, he was informed by CCI employee Captain Ramirez that property could not be authorized for mailing when proof of ownership could not be established to defendant's satisfaction.

{¶ 4} Defendant acknowledged CCI staff confiscated compact discs and cassette tapes from plaintiff on or about August 25, 2006. Defendant explained the property items were confiscated because the amount of compact discs and cassette tapes plaintiff possessed exceeded the institutional possession limits for these particular items. The possession limit for compact discs is 10; plaintiff possessed 46. The possession limit for cassette tapes is 15; plaintiff possessed 32. Defendant also acknowledged the confiscated compact discs and cassette tapes were destroyed on September 30, 2006, after plaintiff was issued a conduct report for possession of contraband and after plaintiff appeared before a CCI hearing officer and entered a guilty

plea for contraband possession. Defendant denied any liability in this matter based on the contention the destroyed compact discs and cassette tapes were admittedly contraband items which plaintiff had no right to possess. Furthermore, defendant stated, "plaintiff could not prove ownership of any of the CDs or Tapes." Therefore, defendant argued plaintiff has no right to pursue a claim for destroyed property that he cannot prove any right of ownership.

{¶ 5} Defendant asserts that if ownership of the destroyed property could be established plaintiff would only be entitled to recover "no more than the fair market value of 10 used CDs and 15 used cassette tapes." Defendant maintains the fair market value for used compact discs and cassette tapes is "substantially less than the purchase price." Plaintiff's damage claim is based on the purchase price for 46 compact discs and 32 cassette tapes.

{¶ 6} Plaintiff filed a response insisting he rightfully owned all the destroyed compact discs and cassette tapes claimed. Plaintiff asserted he should have been given the opportunity to mail out the excessive compact discs and cassette tapes which were confiscated. Plaintiff submitted a copy of an account statement from BMG Music Service, an approved vendor who has sold tapes and compact discs to plaintiff's wife since April 2004. Plaintiff noted his wife, Deborah P. Gale, has been mailing him cassette tapes and compact discs for the past eight years. The account statement from BMG Music Service lists at least ten titles of discs or tapes plaintiff indicated were included in the property defendant confiscated and destroyed. Plaintiff noted he and his wife have ordered and purchased compact discs and cassette tapes from sources other than BMG Music Service. These sources were identified as the store in the local mall, Metal Disc, Century Media, and Pack Control. Plaintiff provided a written statement from Deborah P. Gale, who advised she has sent cassette tapes and compact discs to plaintiff on several occasions. Deborah P. Gale also advised she has had some cassette tapes and compact discs sent to plaintiff by outside vendors. According to Deborah P. Gale, the amount of cassette tapes and compact discs sent to plaintiff over an eight year period was between forty-five to eighty.

{¶ 7} CONCLUSIONS OF LAW

{¶ 8} 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. It was held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated or lost. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

{¶ 9} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. In the instant claim the court finds the assertions of plaintiff and his wife to be persuasive in regard to plaintiff being the rightful owner of the confiscated tapes and compact discs. Sufficient documentation evidence has been submitted to support the claim of ownership.

{¶ 10} When destroying declared contraband, defendant is required to follow the provisions of the Ohio Administrative Code, section 5120-9-55(C).

{¶ 11} Ohio Adm. Code 5120-9-55(C) provides:

{¶ 12} "(C) Disposition of contraband: any items considered contraband under this rule may be confiscated.

{¶ 13} "(1) Minor contraband.

{¶ 14} "(a) When appropriate, such items should be returned to their proper locations or to their original owners. However, if the item came into the inmate's possession through a violation of the rules by the original owner, such item may not be returned to the owner, if the original owner is an inmate.

{¶ 15} "(b) Minor contraband received in the mail may be returned to the sender if the inmate agrees to pay postage costs.

{¶ 16} '(c) Minor contraband, valued at one hundred dollars or less, may be destroyed, donated, or utilized by the institution for training or other official purposes by the order of the warden when the institution has attempted to contact or identify the

owner of the personal property and those attempts have been unsuccessful or *the inmate who owns the personal property agrees in writing to the disposal of the property in question.* (Emphasis added.)

{¶ 17} “(d) Minor contraband, valued at over one hundred dollars, which may not be returned to the original owner if either an inmate or unknown and may not be returned to sender, *may be destroyed or utilized by the institution for training or other official purposes upon the issuance of an order of forfeiture by the court of common pleas in the county in which the institution is located. The warden may file a petition for forfeiture with the court, asking the order be issued. The petition shall attach a list of the property involved and shall state briefly why the property cannot be returned.*” (Emphasis added.)

{¶ 18} It has been previously held 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; *Wooden v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004-01958-AD, 2004-Ohio-4820; *Hemsley v. N. Cent. Correctional Inst.*, Ct. of Cl. No. 2005-03946-AD, 2005-Ohio-4613; *Mayfield v. Richland Correctional Inst.*, Ct. of Cl. No. 2005-07976-AD, 2006-Ohio-358.

{¶ 19} Evidence has shown defendant did not obtain proper authority to destroy the confiscated property. *Brunner v. Southern Ohio Correctional Facility*, 2006-08020-AD, 2007-Ohio-6386.

{¶ 20} Negligence on the part of defendant has been shown in respect to plaintiff’s claims for loss. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD. Evidence has established the destroyed property was depreciable.

{¶ 21} 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.

{¶ 22} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. 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, 658 N.E. 2d 31.

{¶ 23} The standard measure of damages for personal property is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750.

{¶ 24} In a situation where damage assessment for personal property destruction based on market value is essentially indeterminable, a damage determination may be based on the standard value of the property to the owner. This determination considers such factors as value to the owner, original costs, replacement cost, salvage value, and fair market value at the time of the loss. *Cooper v. Feeney* (1986), 34 Ohio App. 3d 282, 518 N.E. 2d 46.

{¶ 25} Plaintiff suffered damages in the amount of \$400.00, plus the \$25.00 filing fee which may be awarded as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.



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

ROBERT A. GALE

Plaintiff

v.

CHILLICOTHE CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-05873-AD

Deputy Clerk Daniel R. Borchert

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 \$425.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Robert A. Gale, #371-343
P.O. Box 5500
Chillicothe, Ohio 45601

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

RDK/laa
4/15
Filed 5/13/08
Sent to S.C. reporter 7/2/08