

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

FRANKIE A. FOSTER

Plaintiff

v.

MADISON CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-08201-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On March 15, 2007, a truck owned by defendant, Madison Correctional Institution (MaCI), and operated by an employee of MaCI ran over a bag of property completely destroying the items contained in the bag. Plaintiff, Frankie A. Foster, an inmate currently incarcerated at the London Correctional Institution (LoCI), claimed ownership of the property items destroyed by defendant's truck.

{¶ 2} Plaintiff explained that the destroyed property items included an Optimus stereo receiver, an Optimus tape deck, a Smith Corona typewriter, two typewriter print wheels, two typewriter correctable ribbons, two typewriter correction tapes, and an electric fan. Plaintiff asserted that all the items claimed were destroyed as a proximate cause of negligence on the part of defendant. Consequently, plaintiff filed this complaint seeking to recover \$589.27, the estimated replacement cost of the completely damaged property. The filing fee was paid.

{¶ 3} Plaintiff pointed out that the property items claimed had been removed from storage several months after he was transferred from the Lebanon Correctional

Institution (LeCI) to LoCI. Plaintiff submitted a copy of a previous property inventory dated March 22, 2002 and compiled when he was incarcerated at the Southern Ohio Correctional Facility (SOCF). This inventory lists plaintiff possessed a receiver, fan, and a tape deck which were placed in long term storage at SOCF. Plaintiff submitted a copy of an email (dated March 7, 2007) generated at LeCI that advises plaintiff's typewriter, fan, and stereo receiver were being stored at LeCI. Another submitted document dated March 19, 2007 signed by a LeCI employee advises plaintiff's fan, typewriter, receiver, and tape deck were being sent to LoCI. Plaintiff submitted an additional document identified as an "invoice" from Laptop World.com dated January 3, 1999. This "invoice" was offered as evidence to establish a Smith Corona typewriter, valued at \$189.00, and an "Optimus" single tape deck receiver, valued at \$229.00, were purchased for plaintiff.

{¶ 4} Defendant acknowledged that a truck owned by MaCI "had run over property and a typewriter, cassette player, stereo receiver and a fan were damaged." Defendant further acknowledged that the typewriter valued at \$91.97 was rightfully owned by plaintiff. Defendant admitted liability in the amount of \$91.97 for the damage to plaintiff's Smith Corona typewriter. However, defendant denied any liability for the damage to an Optimus cassette player, an Optimus stereo receiver, and a fan based on the contention that plaintiff has not offered sufficient evidence to prove he actually owned the remainder of the destroyed property. Defendant related that no receipts or titles for the stereo receiver, cassette player, and fan were produced. A title for a Smith Corona typewriter was located listing the value of the property at \$91.97. Defendant explained that all the claimed items which were destroyed on March 15, 2007 had been held in long term storage at LeCI under plaintiff's name.

{¶ 5} Defendant submitted copies of plaintiff's property inventories compiled when he was incarcerated at Ross Correctional Institution (RCI). One inventory dated June 25, 200 lists an Optimus cassette player, an Optimus AM/FM radio, and a fan. Another inventory dated May 30, 2001, lists an Optimus cassette player, a radio receiver, and three fans. A third RCI inventory dated March 22, 2002, list a receiver, fans, and a tape deck and notes these items had been placed in "Long Term Storage" at RCI.

{¶ 6} Plaintiff filed a response insisting that he was the rightful owner of all the property destroyed by defendant's truck. Additionally, plaintiff related that the Smith Corona typewriter that was destroyed on March 15, 2007 was not the same Smith

Corona typewriter valued at \$91.97. Plaintiff explained he turned in the typewriter valued at \$91.97 when he purchased a new typewriter (the one destroyed on March 15, 2007) valued at \$189.00. Plaintiff had previously submitted an “invoice” purporting that a Smith Corona typewriter was purchased on or about January 3, 1999 for \$189.00. Plaintiff stated that all the property destroyed by defendant’s truck was engraved with his name and inmate number. Plaintiff also stated that the two typewriter print wheels, the two typewriter correction tapes, and the two typewriter correctable ribbons listed in his complaint were all contained in the damaged typewriter and he never had access to remove these items from the typewriter. Plaintiff asserted again that his property was valued at \$589.27 and he should be entitled to recover that amount.

CONCLUSIONS OF LAW

{¶ 7} 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} 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.

{¶ 9} 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} Negligence by defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶ 11} This court has previously 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 damaged. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

{¶ 12} The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds all the destroyed property was owned by plaintiff.

{¶ 13} In a claim of this type for property damage, plaintiff’s damage claim is

limited to the fair market value of the typewriter or the cost of repair amount, whichever is less. *Maloney v. Gen. Tire Sales* (1973), 34 Ohio App. 2d 177, 63 O.O. 2d 289, 296 N.E. 2d 831.

{¶ 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, 577 N.E. 2d 160.

{¶ 15} 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.

{¶ 16} The standard measure for personal property is market value. *McDonald v. Ohio State Univ. Veterinary Hosp.* (1994), 67 Ohio Misc. 2d 40, 644 N.E. 2d 750. The trier of fact finds all items claimed constituted depreciable property with a market value well below purchase price. Based on the evidence provided the items were quite old by March 15, 2007.

{¶ 17} Defendant is liable to plaintiff for property loss in the amount of \$200.00, plus the \$25.00 filing fee which may be reimbursed 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.



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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 \$225.00, which includes the filing fee. Court costs are assessed against defendant.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
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