

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.

LEBANON CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-08961-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} Plaintiff, Frankie A. Foster, an inmate, filed this complaint against defendant, Lebanon Correctional Institution (“LeCI”), alleging his two electric razors and desk lamp were lost while under the control of LeCI staff. On August 21, 2006, plaintiff and his personal property were transferred from LeCI to the London Correctional Institution (“LoCI”). Plaintiff explained that several items of his personal property were held in “Long-Term Storage” at LeCI and were not transferred to LoCI on August 21, 2006. Plaintiff pointed out the two razors and desk lamp were held in “Long-Term Storage” at LeCI along with other electronic devices. On March 15, 2007, property held in “Long-Term Storage” at LeCI was destroyed during transport from LeCI to LoCI. The razors and desk lamp were not among the property destroyed on March 15, 2007. Plaintiff never regained possession of the razors and desk lamp and he has suggested that LeCI staff caused these particular items “to be lost, misplaced or stolen by an

inmate out of the Vault area” where the items had been stored. Consequently, plaintiff filed this complaint seeking to recover \$101.00, the estimated replacement cost of two electric razors and a desk lamp. The filing fee was paid.

{¶ 2} Plaintiff submitted a copy of one of his property inventories dated March 22, 2002 and compiled while he was incarcerated at the Southern Ohio Correctional Facility (“SOCF”). This inventory was compiled at SOCF incident to plaintiff’s transfer from Ross Correctional Institution (“RCI”). The March 22, 2002 SOCF inventory lists plaintiff possessed two electric razors and two desk lamps which were designated as being placed in “Long-Term Storage.” Plaintiff related that he did not have access to any property placed in “Long-Term Storage” at LeCI. Plaintiff recalled he first arrived at LeCI in August 2003 and the property that had been held in “LongTerm Storage” at SOCF was forwarded to LeCI a few months after he arrived there (October 2003). Plaintiff asserted the razors and lamps were sent from SOCF to LeCI “via U.S. Mail.” There was no record any property held at SOCF in “Long-Term Storage” was mailed or forwarded to LeCI after plaintiff was transferred there on or about August 7, 2003.

{¶ 3} Defendant denied ever receiving plaintiff’s razors and desk lamp from SOCF when plaintiff was transferred there on August 7, 2003. Defendant submitted a copy of plaintiff’s property inventory dated August 7, 2003 and compiled incident to his transfer to LeCI from SOCF. The inventory contains plaintiff’s signature acknowledging that the document is a complete and accurate listing of his property despite the fact that none of the property items placed in “Long-Term Storage” at SOCF are listed on this property record. Defendant argued that if the razors and lamps were lost or stolen, the loss had to occur when plaintiff was incarcerated at SOCF between April 2002 and August 2003 and therefore plaintiff’s claim for these items would have been filed beyond the applicable statute of limitations for filing action in this court.¹ Defendant reasoned that in order to timely file this complaint plaintiff needed to commence the action by August 2005. The instant claim was filed on November 26, 2007. Defendant produced records showing LeCI staff received property items in October 2003 from SOCF that

¹ R.C. 2743.16(A) states:

“(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.”

had been held for plaintiff in “Long-Term Storage.” The items received from SOCF did not include either razors or a lamp. The earliest submitted record in regard to defendant advising plaintiff that his razors and lamp were not forwarded from SOCF was on March 19, 2007 when LeCI staff responded to a March 8, 2007 grievance filed by plaintiff.

{¶ 4} Plaintiff filed a response asserting that this claim should not be barred by the two-year statute of limitations due to the fact he did not discover his razors and lamp which had been in “Long-Term Storage” had been lost, stolen, or misplaced. Plaintiff recorded he purchased electric razors and desk lamps during 2000 while incarcerated at Ross Correctional Institution.

CONCLUSIONS OF LAW

{¶ 5} The court finds plaintiff’s claim was filed within two years from the date his cause of action accrued and consequently, this claim is not barred by the provisions of R.C. 2743.16(A). Based on the facts and circumstances presented, the court finds the time for commencing plaintiff’s claim began to run on March 19, 2007 when it was first reported by defendant that his razors and desk lamp could not be found in “Long-Term Storage.” Plaintiff filed his claim on November 26, 2007, well within the applicable two-year statute of limitations for filing actions in this court.

{¶ 6} 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.

{¶ 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} 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.

{¶ 9} 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.

{¶ 10} 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, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 11} In all probability, plaintiff's razors and desk lamp were lost, stolen, or misplaced while under defendant's control. Therefore, negligence on the part of defendant has been shown in respect to plaintiff's loss. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶ 12} 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.

{¶ 13} 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.

{¶ 14} 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. Plaintiff's items claimed constituted depreciable property. Plaintiff has suffered damages in the amount of \$50.00, plus filing fee costs.



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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 \$75.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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