

# 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

LOUIS DEC

Plaintiff

v.

GRAFTON CORRECTIONAL

Defendant

Case No. 2008-11150-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Louis Dec, an inmate incarcerated at defendant, Grafton Correctional Institution (“GCI”), asserted that “eleven graphite portraits of film stars” he drew were discarded during an August 27, 2007 shakedown search of his living area. Plaintiff maintained the eleven drawings remain missing and were never returned to his possession. Consequently, plaintiff filed this complaint seeking to recover \$220.00, the stated value of the eleven drawings. The filing fee was paid.

{¶ 2} 2) Defendant filed an investigation report admitting liability for property loss. Defendant deferred the amount of a damage award to the discretion of this court.

{¶ 3} 3) Plaintiff filed a response pointing out that \$220.00 is a reasonable damage amount in a claim of this type. Plaintiff provided the court with printed copies of the other drawings he has done.

### CONCLUSIONS OF LAW

{¶ 1} 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.

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} 5) Negligence on the part of defendant has been shown in respect to the loss of plaintiff’s eleven drawings. *Hightower v. Marion Correction Inst., Ct. of Cl. No. 2004-01303-AD, 2004-Ohio-3493.*

{¶ 6} 6) 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.

{¶ 7} 7) 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.

{¶ 8} 8) An inmate plaintiff may recover the market value of property damage through the negligence of defendant if the value can be established within a reasonable degree of certainty. *Gaiter v. Lima Correctional Facility* (1988), 61 Ohio Misc. 2d 293, 578 N.E. 2d 895. A plaintiff is competent to testify in respect to the true value of his property. *Gaiter*.

{¶ 9} 9) 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.

{¶ 10} 10) In a situation where a 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 cost, 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.

{¶ 11} 11) Plaintiff suffered damages in the amount of \$220.00, plus the \$25.00 filing fee which may be awarded as compensable damages pursuant to R.C. 2335.19. *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 \$245.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
5/14  
Filed 5/29/09  
Sent to S.C. reporter 9/29/09