

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

RICHARD DIX, JR.

Plaintiff

v.

LORAIN CORRECTIONAL INSTITUTION

Defendant

Case No. 2009-02561-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On June 25, 2008, plaintiff, Richard Dix, Jr., an inmate, was transferred from the Lake Erie Correctional Institution (“LaeCI”) to defendant, Lorain Correctional Institution (“LorCI”). Plaintiff was subsequently transferred from LorCI to the Grafton Correctional Institution (“GCI”) on June 27, 2008. Plaintiff recalled that as he departed LorCI for GCI he noticed that his radio/cassette player was missing. Plaintiff pointed out his radio/cassette player was never recovered and he presumed it was stolen while under the custody of LorCI staff.

{¶ 2} 2) Plaintiff filed this complaint claiming his “Eltron” radio/cassette player was stolen as a result of negligence on the part of LorCI personnel in handling his property. Plaintiff seeks damages in the amount of \$85.00, the stated replacement cost of an “Eltron” radio/cassette player. Plaintiff submitted a copy of a title for an “Eltron” radio/cassette player issued at LaeCI and dated September 28, 2006. Plaintiff did not submit any evidence to establish the value of an “Eltron” radio/cassette player. Payment of the filing fee was waived.

{¶ 3} 3) Defendant acknowledged plaintiff complained of missing property when he departed LorCI. However, defendant maintained plaintiff claimed the loss of a “Super 3” radio to two officers of LorCI. Defendant explained plaintiff’s property was searched and they could not locate a “Super 3” radio or an “Eltron” radio/cassette player. Defendant stated the officers “did find a small walkman type radio which plaintiff had no title for.” Defendant submitted a copy of plaintiff’s property inventory dated June 25, 2008 and compiled incident to plaintiff’s transfer from LaeCI to LorCI. The inventory lists a radio, but does not list a cassette player. The inventory also lists fifteen cassette tapes. Defendant also submitted a copy of plaintiff’s property inventory compiled incident to his transfer from GCI to LaeCI on July 21, 2006. This inventory lists an “Eltron” radio, but does not list a cassette player. The same inventory lists fifteen cassette tapes. Defendant denied a radio cassette player owned by plaintiff was lost or stolen while under the control of LorCI staff. Defendant again asserted plaintiff complained to LorCI staff about a missing “Super 3” radio and did not mention an “Eltron” radio. Plaintiff did claim in his complaint that an “Eltron” radio cassette player was stolen.

CONCLUSIONS OF LAW

{¶ 4} 1) 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 action, the trier of fact finds the statements offered by plaintiff concerning the delivery and subsequent loss of his radio/cassette player to be persuasive. Conversely, the court does not find defendant’s assertions regarding the radio/cassette player particularly persuasive.

{¶ 5} 2) 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.

{¶ 6} 3) 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.

{¶ 7} 4) 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.

{¶ 8} 5) Negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction* (2001), 2000-10634-AD.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 8) 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.

{¶ 12} 9) Evidence has shown plaintiff's radio/cassette player was at least two years old when the incident forming the basis of this claim occurred. Based on the fact the radio/cassette constituted depreciable property, the court finds plaintiff has suffered damages in the amount of \$20.00.

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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 \$20.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
7/27
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