

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 MARTIN

Plaintiff

v.

OHIO DEPT. REH. AND CORR.

Defendant

Case No. 2009-03151-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On February 5, 2009, plaintiff, Robert Martin, an inmate incarcerated at defendant's North Central Correctional Institution ("NCCI"), was transferred from NCCI to defendant's Madison Correctional Institution ("MaCI"). Incident to this transfer, plaintiff's personal property was packed by NCCI staff and forwarded to MaCI.

{¶ 2} 2) Plaintiff related that when he regained possession of his personal property at MaCI he discovered his television set was missing. Plaintiff has alleged his television set was lost or stolen as a proximate cause of negligence on the part of MaCI personnel in handling his property. Plaintiff noted he saw his television set being loaded on the bus that transported him from NCCI to MaCI and observed his television set when he first arrived at MaCI. According to plaintiff, the television set was not among his property when he was subsequently permitted to retrieve the property at MaCI. Plaintiff filed this complaint seeking to recover \$180.54, the total replacement cost of a

KTV television, plus \$1,200.00 for “noneconomic injuries under R.C. 2323.54(d)(2).”¹ Plaintiff also requested “prejudgment interest at 10% compounded daily.”² Total damages claimed amount to \$1,390.54. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 3} 3) Plaintiff submitted an invoice for the purchase of a KTV television set dated February 18, 2008. Plaintiff also submitted a “Certificate of Ownership” for a KTV television set issued to him by NCCI on February 21, 2008. Furthermore, plaintiff submitted his copies of his property inventories compiled at NCCI and MaCI incident to the February 5, 2009 transfer. The NCCI inventory lists a KTV television set and bears plaintiff’s signature, but does not bear any signature of any NCCI personnel. The MaCI inventory does not list a television set and contains the notation “TV Missing.” Both plaintiff and the MaCI vault officer signed the MaCI inventory.

{¶ 4} 4) Defendant contended plaintiff failed to provide sufficient evidence to establish he delivered a television set into the custody of NCCI personnel incident to a transfer from NCCI to MaCI. Defendant disputed plaintiff’s assertion he actually possessed a television set on February 5, 2008 when he was transferred from NCCI to MaCI. Defendant pointed out plaintiff’s February 5, 2009 property inventory compiled at NCCI “contained no signature from staff.” Defendant denied any title record exists for plaintiff possessing a television set while at NCCI. Defendant suggested the title plaintiff submitted to this court may not be legitimate. Defendant acknowledged computer records “reflect a TV being issued to the inmate (plaintiff) on February 22, 2008.” Defendant denied a television set ever arrived at MaCI with plaintiff on February 5, 2009.

{¶ 5} 5) Plaintiff filed a response insisting his television set was delivered to defendant’s personnel and was subsequently lost or stolen while in the custody and

¹ R.C. 2323.54 has been repealed since July 6, 2001. Regardless plaintiff is not entitled to extraordinary damages attendant to a claim of property loss. *Galloway v. Dept. of Rehab. & Corr.* (1979), 78-0731-AD; *Reynolds v. Lebanon Corr. Inst.* (2001), 2001-03798-AD.

² R.C. 2743.18(B)(1) provides in regard to interest:

“(B)(1) Except as otherwise provided in division (B)(2) of this section, interest shall be allowed on a judgment or determination rendered against the state in a civil action pursuant to this chapter at the same rate that is applicable to judgments rendered against private parties to a suit as specified in section 1343.03 of the Revised Code and for each day between the date of entry of the judgment or the determination pursuant to division (C) of section 2743.10 of the Revised Code and the date of payment of the judgment or determination pursuant to division (C)(3) or (6) of section 2743.19 of the Revised Code, or for sixty days from the date of entry of the judgment or the determination, whichever is less.”

care of defendant. Referencing the unsigned inventory compiled at NCCI plaintiff related he “has no control over inventory sheets in possession of (defendant) and can’t compel guard signatures.” Plaintiff reasserted his television set was forwarded from NCCI to MaCI and arrived at MaCI, but could not be located when he went to the MaCI vault to retrieve his property.

CONCLUSIONS OF LAW

{¶ 6} 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 television set to be persuasive. Conversely, the court does not find defendant’s assertions regarding the television set particularly persuasive.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 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.

{¶ 13} 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.

{¶ 14} 9) Evidence has shown plaintiff's television set was almost one year old when the incident forming the basis of this claim occurred. Based on the fact the television set constituted depreciable property, the court finds plaintiff has suffered damages in the amount of \$130.00, 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 \$155.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Robert Martin, #138-186
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RDK/laa
7/9
Filed 7/23/09
Sent to S.C. reporter 12/4/09