

[Cite as *Bonnette v. Dept. of Rehab. & Corr.*, 2018-Ohio-1664.]

JAMES A. BONNETTE

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00187-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, James Bonnette, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on August 11, 2016, while housed at defendant’s Trumbull Correctional Institution (“TCI”), he noticed small items missing or used in his cell. Plaintiff related he placed as many items of his personal property as he could in his locker box. On August 13th, he noticed one of his fans missing after returning from recreation. Next day, plaintiff noticed items missing from his locked locker box. At that time, he informed Correctional Officer (“CO”) Kleinknecht that he believed his cellmate was stealing from him. He stated CO Kleinknecht reported there was nothing he could do and to report his suspicions to Sgt. Lewis on Monday August 15th. Plaintiff related he went to his job assignment that day, and when he returned the lock from the locker box was missing as well as the contents of his locker box. Plaintiff related at that time he was moved from his cell to another location.

{¶2} Plaintiff related ODRC did not conduct a search for his stolen property. Plaintiff related there are two cameras which view his cell. Plaintiff related he provided defendant’s agents a list of his stolen property and filed a theft/loss report. Plaintiff stated he followed all procedures to no avail.

{¶3} Plaintiff lists the following property items as stolen and their values: Casio basic calculator, \$5.00; 6" Lakewood clip-on-fan, \$12.29; blue blanket, \$13.75; sweatshirt, \$9.14; alarm clock, \$7.94; Reebok shower shoes, \$14.94; brown belt, \$5.38; sweatpants, \$9.14; CD player, \$42.99; 6' video cable, \$6.40; Koss CL-Pro headphones, \$18.50; RCA remote control, \$10.80; Timberland boots, \$80.25; Sony digital radio, \$43.87; handheld game, \$15.00; handheld poker game, \$17.15; battery operated shaver, \$12.95; Nike Fusion tennis shoes, \$74.95; two pairs of GRT Sport Dazzle shorts, \$19.90; JP4 player, \$50.00; two pillows, \$14.00; hot pot, \$19.32; two pairs of JVC earbuds, \$21.70; two 8" fans, \$44.00; beard trimmer, \$24.47; nose/ear trimmer, \$12.00; EP3 earbuds, \$3.05; TV cable splitter, \$3.37; two five way electrical plugs, \$26.00; six way wall mount electrical plug, \$10.00; lamp, \$10.00; light bulb, \$.60; padlock, \$7.10; two decks of poker cards, \$2.50; two bars of Zest soap, \$4.90; two Men's Speed Stick deodorant, \$5.60; two Colgate toothpastes, \$4.80; highlighter, \$.52; Bic ink pen, \$.95; two toothbrushes, \$2.10; three AAA batteries, \$3.75; three AA batteries, \$3.75; two anti-fungal creams, \$3.00; two mirrors, \$4.54; pair of shower shoes, \$1.03; fifteen stamped envelopes, \$8.70; three laundry detergents, \$3.60; razor ten pack, \$2.08; two green bath towels, \$20.00; baby powder, \$1.23; dental floss, \$1.33; sewing kit, \$1.76; Ibuprofen, \$1.87; copy card, \$2.00; two Famotidine (Pepcid), \$12.40; two Tums, \$3.64; Vaseline, \$.95; cotton swabs, \$1.02; two Maxwell House Coffees, \$5.20; and twenty-four Beef Ramen soups, \$6.00. The total of plaintiff's stolen property equals \$775.15.

{¶4} Plaintiff submitted a copy of the theft/loss report dated September 10, 2016. Under the section stating: "Explain what action (i.e. search) was taken at the time the theft was reported and if no action was taken, why not" it stated:

"Cell #203 was searched; none of the items were recovered. They had been missing 8/15/16."

{¶5} Under section stating: “Report of investigation of theft including any witnesses or suspects”, it stated:

“Inmate was robbed on 8/15/16 in 13W/264. Inmate had brought situation to the attention of several staff members before [sic] he was robbed. He was finally moved to 12W/264 on 8/15/16; went to 12E 203B on 8/17/16. List of lost/stolen items with receipts/prices attached.”

{¶6} Finally, under the section entitled Chief Security Officer’s/Designee’s Action the box in front of “No further investigation deemed appropriate at this time” is checked, with the handwritten notation “State to replace.”

{¶7} Plaintiff submitted an invoice from Access SecurePak dated January 30, 2007, which evidences the purchase of a Casio Basic calculator for \$5.00, Lakewood 6” clear clip-on-fan, \$12.79; a blue blanket for \$13.75; and a sweatshirt for \$8.50. A second Access SecurePak invoice dated November 19, 2007, evidencing the purchase of a brown belt for \$5.38; alarm clock for \$7.94; Reebok sandals for \$14.94; a sweatshirt for \$9.14 and sweatpants for \$9.14. Another Access SecurePak invoice dated January 11, 2011, for the purchase of a four pack of AAA batteries, \$2.14; a four pack of AA batteries, \$2.14; a Tetris handheld game, \$15.00; a handheld poker game, \$17.19; a 6’ video cable, \$3.20; Koss earbuds, \$3.73, and three pairs of shorts, \$25.65. An invoice from Access SecurePak dated August 9, 2009, for the purchase of a 6’ video cable, \$3.20; Maxell earbuds, \$4.48, and an RCA remote control, \$10.80. An invoice from Access SecurePak dated March 16, 2013, evidencing the purchase of a 6’ video cable for \$2.85; Koss CL-Pro headphones for \$18.50 and a RCA remote control, \$10.10.

{¶8} A withdrawal slip dated February 27, 2016, for the purchase of a pillow for \$7.00. An invoice from Union Supply Direct dated September 17, 2016, for the purchase of three pairs of GRT Sport Dazzle shorts, \$29.85; battery operated shaver, \$12.95; five packs of stamped envelopes, \$17.50; and Nike Fusion tennis shoes, \$74.95. A commissary receipt from TCI dated July 7, 2016, for the purchase of

Ibuprofen, \$1.87 and earphones for \$3.05. A commissary slip from TCI dated August 10, 2016, for the purchase of 24 Ramen Noodle soups, \$6.00. A TCI commissary slip dated December 23, 2013, for the purchase of a Norelco beard and moustache trimmer, \$24.47. A commissary slip dated August 3, 2016, for the purchase of a four pack of AAA batteries, \$1.25. Commissary slips dated January 13, 2016 and February 12, 2014, for the purchase of two mirrors at \$2.27 each. Finally, a commissary slip dated September 10, 2015, for the purchase of Famotidine for \$6.20. Commissary slips from TCI dated February 4, 2012, May 25, 2010, February 19, 2014, June 25, 2012, September 10, 2013, September 2, 2015, for the purchase of the following items and their values respectively: shower shoes, \$1.03; Petroleum jelly, \$.95; ink pen, \$.95; mirror, \$2.27; combination lock, \$4.80; earphone plug, \$10.85; and a deck of playing cards, \$1.25.

{¶9} Plaintiff seeks damages in the amount of \$775.15. Plaintiff submitted the \$25.00 filing fee with the complaint.

{¶10} Plaintiff submitted additional documents after he submitted the form complaint. Plaintiff asserted defendant tried to settle this matter with plaintiff. After depreciation of the items in question, plaintiff was offered \$130.19, which plaintiff refused.

{¶11} Defendant submitted an investigation report. While denying liability in this matter ODRC offered to compromise plaintiff's claim for \$130.19. Defendant asserted that plaintiff should be granted judgment in the amount of \$130.19.

{¶12} Defendant lists the following property as missing: Casio calculator, Lakewood 6" fan, blue blanket, sweatshirt, alarm clock, Reebok shower shoes, military brown belt, sweatpants, CD player, video cable, Koss headphones, RCA 3007 remote, Timberland boots, Sony radio, Tetris game, poker game, Nike Fusion tennis shoes, two pairs of shorts, JP4 player, two JVC earbuds, nose/ear trimmer, EP3 earbuds, lock, two

bars of Zest soap, two tubes of Colgate toothpaste, highlighter, ink pen, three AAA batteries, shower shoes, three Limline laundry detergents, and two Tums.

{¶13} Defendant asserted the loss of the following items should be granted to plaintiff. The original date, costs and depreciated value are listed for the following items: Casio calculator 2013/\$4.60/3.22; Koss headphones 2013/\$18.50/\$12.95; RCA 3007 remote 2013/\$10.10/\$7.07; Sony radio 2008/\$43.87/\$8.77; Tetris game 2011/\$15.00/\$7.50; Poker game 2011/\$17.15/\$8.57; two pairs of shorts 2014/\$9.95/\$6.64; JP4 player 2014/\$50.00/\$40.00; nose/ear trimmer 2014/\$12.95/\$10/36; Lock 2016/\$7.10/\$7.10; highlighter 2016/\$.52/\$.52; ink pen 2016/\$.95/\$.95; shower shoes 2016/\$1.03/\$1.03; six Ramen Beef Noodle soups 2016/\$6.00/\$14.00; and deodorant 2016/\$1.11.

{¶14} Defendant submitted a copy of Claims Pages Depreciation Guide, which was used by ODRC to calculate plaintiff's loss of personal property in this case.

{¶15} Defendant submitted a copy of plaintiff's Inmate Sales Activity from August 1, through August 20, 2016, immediately prior to and during plaintiff's notification of staff that he believed items were being stolen from his cell and locked locker box. During this time period plaintiff purchased the following items and their costs: antacid tablets, \$1.82; deodorant, \$2.80; ink pen, \$.95; toothpaste, \$2.40; highlighter, \$.52; laundry detergent, \$1.20; three pack Zest soap, \$2.56; 60 Ramen Noodles, \$15.00; and a combination lock, \$7.10.

{¶16} Defendant submitted a copy of a packing slip from Access SecurePak dated December 9, 2016, which evidenced the purchase of a Sony SRFM35FP radio for \$39.95. A copy of an invoice from Union Supply Direct dated September 17, 2014, for the purchase of three pairs of GRT Sport Dazzle shorts for \$9.95 each; a battery-operated shaver, \$12.95; and Nike Dual Fusion Cross Training tennis shoes, \$74.95. A copy of a receipt from Access SecurePak dated March 16, 2013, for the purchase of a 6' video cable, \$2.85; RCA RCU 300T remote control, \$10.10; and Koss CL-20

headphones, \$18.50. A copy of a receipt from Access SecurePak dated December 3, 2012, for the purchase of two sweatshirts at \$8.00 each. A receipt from Access SecurePak dated May 18, 2011, for the purchase of Koss earbuds, \$3.73. A copy of a receipt from Access SecurePak dated January 11, 2011, for the purchase of a four pack of AAA batteries, \$2.44; a four pack of AA batteries, \$2.14; Tetris handheld game, \$15.00, and poker handheld game, \$17.15. A copy of a receipt from Access SecurePak dated May 23, 2008, for the purchase of Timberland boots for \$80.25 and Sony SRFM32/35FP Walkman, \$43.87. A copy of a receipt from Access SecurePak dated November 9, 2007, for the purchase of an Advance Clear alarm clock, \$7.94; Reebok Kobo sandals, \$14.94; a military belt, \$5.38, and sweatshirt and sweatpants, \$9.14 each. A copy of a receipt from Access SecurePak dated January 30, 2007, for the purchase of a Casio calculator, \$5.00 and blue blanket, \$13.75, and finally a receipt from Access SecurePak dated January 30, 2007, for the purchase of a clear CD player for \$42.99.

{¶17} Plaintiff submitted a response to the investigation report. Plaintiff reiterated the allegations contained in his form complaint that he informed defendant's personnel about the theft but no search was conducted to locate his property. Plaintiff asserted that his property should not be depreciated but he should be awarded its full value at the time of purchase. However, plaintiff lists all the missing property and utilizing the Depreciation Guide provided by ODRC recalculated his loss as \$328.75.

{¶18} Plaintiff also supplied commissary receipts for purchases from TCI commissary. The item, date of purchase and amount are listed: Ramen Noodles, December 14, 2015, \$.08 each; light bulb, November 30, 2015, \$2.42; four pack of AAA batteries, February 22, 2016, \$1.25; Maxwell House coffee, a date sometime in 2016, \$2.60.

CONCLUSIONS OF LAW

{¶19} Defendant has admitted liability for plaintiff's property loss. *Billups v. Department of Rehabilitation and Correction*, 2000-10634-AD (2001).

{¶20} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶21} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App.3d 42, 495 N.E.2d 462 (10th Dist. 1985). 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*, 102 Ohio App.3d 782, 658 N.E.2d 31 (12th Dist. 1995).

{¶22} In a situation where damage assessment for personal property destruction or loss 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*, 34 Ohio App.3d 282, 518 N.E.2d 46 (12th Dist. 1986).

{¶23} Many items of plaintiff's personal property are depreciable. This court has the authority to determine depreciation based on the age of the property in question. See *Weaver v. Ohio Department of Rehabilitation and Correction*, 2011-10151-AD (2012); *Conner v. Allen Correctional Institution*, 2011-10134-AD (2012); and *Woodward v. Ohio Department of Rehabilitation and Correction*, 2016-00267-AD (2016).

{¶24} The following items and their values were purchased immediately prior to the loss of his property and he shall be granted the full value of these items: Antacid tablets, \$1.82; deodorant, \$2.80; one ink pen, \$.95; one tube of toothpaste, \$2.40; highlighter, \$.52; one packet of laundry detergent, \$1.20; three pack of Zest soap, \$2.56; shower shoes, \$1.03; four pack of AAA batteries, \$1.25; Ramen Noodles, \$15.00; and a combination lock, \$7.10. These lost items total \$36.63.

{¶25} On December 6, 2016, approximately eleven days prior to the property loss, plaintiff ordered the following items from Access SecurePak, which were subsequently lost. The following items were lost and their full value was: one ink pen, \$.25; Sony SRFM/35FP Walkman, \$39.95; and ten stamped envelopes, \$7.00. These lost items total \$47.20.

{¶26} Plaintiff maintained he purchased the following property items in 2016. AA batteries, anti-fungal cream, ten pack of razors, two green bath towels, baby powder, dental floss, sewing kit, Ibuprofen, copy card, and cotton swabs. However, plaintiff failed to submit evidence i.e. commissary receipts revealing the purchase of said items with the exception of the towels, these items could have been partially or whole used prior to the incident dated of August 15, 2016. Accordingly, no award will be granted for reimbursement of these items.

{¶27} Plaintiff in 2016, also purchased EP3 earbuds, \$3.05; Tums, \$3.64; a pillow, \$7.00; and Vaseline, \$.95. Plaintiff shall be granted \$14.64 for the loss of these items.

{¶28} Plaintiff purchased the following items in 2015, a light bulb, \$.60 and two decks of playing cards, \$2.50. Plaintiff shall be granted \$.60 for the light bulb and \$1.87 for the two packs of playing cards.

{¶29} Plaintiff purchased the following items in 2015. Battery operated shaver, \$12.95; Nike Fusion tennis shoes, GRT Sport Dazzle shorts, \$19.90; JP4 player, hot pot, \$19.32; beard trimmer, \$24.99; and nose/ear trimmer, \$12.00. All of this property is depreciable and pursuant to the Depreciation Guide submitted by defendant with the investigation report, the property would have the following replacement values: battery operated shaver, \$10.36; Nike Fusion tennis shoes, \$0.00; two pair of GRT Sport Dazzle shorts, \$6.58 each; hot pot, \$11.59; beard trimmer, \$19.99; and nose/ear trimmer, \$9.60. However, plaintiff failed to submit a receipt for the purchase of a JP4 player. Accordingly, plaintiff shall be granted \$64.70 for the loss of these items.

{¶30} In 2013, plaintiff purchased the following items: FF video cable, \$6.40; Koss CL-Pro headphones, \$18.50; RCA RCV 300T remote control, \$10.70 and two pairs of JVC earbuds, \$21.70. Based on the Depreciation Guide the above listed property has the following replacement values: FF video cable, \$.65; Koss CL-Pro headphones, \$12.95; RCA RCV 300T remote control, \$7.49; and two pairs of JVC earbuds, \$15.19. Plaintiff suffered damages for the loss of this property in the amount of \$36.28.

{¶31} In 2011, plaintiff purchased the following items: Tetris handheld game and a handheld poker game, these games cost \$15.00 and \$17.15, respectively. After depreciation, the games were worth \$7.50 and \$8.57, respectively. Accordingly, plaintiff is awarded \$16.07 for the loss of this property.

{¶32} While plaintiff purchased Timberland boots in 2008, based on the depreciation guide these boots have no replacement value. Furthermore, plaintiff purchased the following items in 2007: Casio Basic calculator, Lakewood 6" clip-on-fan, a blue blanket, sweatshirt, alarm clock, Reebok shower shoes, CD player and military brown belt. Based on the depreciation guide this property has no replacement value.

{¶33} Finally, plaintiff asserted claims for the loss of TV cable splitter, 5-way plug, lamp, 8" fan, and 6-way wall mount plug. However, plaintiff failed to provide receipts for this property evidencing their purchase.

{¶34} Therefore, plaintiff is granted judgment in the amount of \$217.99, plus \$25.00 for reimbursement of the filing fee as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc.2d 19, 587 N.E.2d 990 (Ct. of Cl. No. 1990).

JAMES A. BONNETTE

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00187-AD

Interim Clerk Daniel R. Borchert

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 \$242.99, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Interim Clerk