

IN THE COURT OF CLAIMS OF OHIO

PATRICK J. SHANK

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2023-00687AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Patrick Shank (“plaintiff”), an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related in June 2023, at defendant’s Belmont Correctional Institution, he was placed in segregation and when he was released from segregation, he discovered that his Alesis SR18 Drum Machine and JS-10 player were missing. Plaintiff asserted that his drum machine was \$259.00 plus tax and his JS-10 player was \$499.99 plus tax. Plaintiff also alleged mental suffering, physical abuse, and stress. Plaintiff seeks damages in the amount of \$10,000.00. Plaintiff was not required to submit the \$25.00 filing fee with the complaint.

{¶2} Defendant submitted an investigation report admitting liability for the lost drum machine and JS-10 player. However, defendant asserted that the value of these items at the time they were lost was not the amount plaintiff stated in his complaint. Defendant stated that the JS-10 player was purchased in September 2015 for \$499.99 and the drum machine was purchased in February 2017 for \$259.00; defendant requested that the court order payment to plaintiff for the fair market value of these items. Further, defendant asserted that to the extent that plaintiff claims damages for emotional distress for the loss of his property, this is not compensable under Ohio law. Defendant argued that if plaintiff is asserting a claim for intentional infliction of emotional distress, he has failed to prove any of the elements.

{¶3} Plaintiff submitted a response to defendant's investigation report reasserting his claim. Plaintiff attached an affidavit of himself to the response in which he describes systemic abuse.

{¶4} Plaintiff's claim for emotional injury fails as a matter of law. Such damages are not available on this type of claim because he alleges no physical injury, involvement in an accident, or fear of physical harm. *Bayt v. Kent State Univ.*, Ct. of Cl. No. 2007-02491-AD, 2008-Ohio-2634, ¶ 7. Further, plaintiff has submitted no evidence proving that he suffered emotional injury or establishing the monetary value he places on it.

{¶5} Further, under the Eighth Amendment to the U.S. Constitution, prison officials have a duty to provide humane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 832, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). Additionally, inmate complaints regarding the conditions of confinement are treated as claims arising under Section 1983, Title 43, United States Code. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 637 N.E.2d 306 (1994). To the extent the complaint can be construed as raising a challenge to the conditions of confinement, such a claim is not actionable in the Court of Claims. *Payne v. Mohr*, No. 2:11-CV-00831 (S.D. Ohio Oct. 6, 2011); *Thompson v. Southern State Community College*, 10th Dist. No. 89AP-114 (June 15, 1989); *Burkey v. S. Ohio Corr. Facility*, 38 Ohio App.3d 170, 528 N.E.2d 607 (10th Dist. 1988). Therefore, the only remaining claim is plaintiff's claim for lost property.

{¶6} To prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed plaintiff a duty, that defendant breached that duty, and that defendant's breach proximately caused plaintiff's damages. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 8 citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶7} Whether a duty exists is a question of law to be decided by the court, while breach of such duty is a question of fact. *Snay v. Burr*, 167 Ohio St.3d, 2021-Ohio-4113, 189 N.E.3d 758 ¶ 14, citing *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989).

{¶8} “[Defendant] does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but it does have the duty to make reasonable attempts to protect such property. When prison authorities obtain possession of an

inmate's property, a bailment relationship arises between the correctional facility and the inmate. By virtue of this relationship, [defendant] must exercise ordinary care in handling and storing an inmate's property. However, a correctional institution cannot be held liable for the loss of contraband property that an inmate has no right to possess." (Internal citations omitted.) *Triplett v. S. Ohio Corr. Facility*, 10th Dist. Franklin No. 06AP-1296, 2007-Ohio-2526, ¶ 7.

{¶9} This court has consistently held that "[i]f property is lost or stolen while in defendant's possession, it is presumed, without evidence to the contrary, defendant failed to exercise ordinary care." Internal citations omitted. *Velez v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2019-00053-AD, 2020-Ohio-2932, ¶ 6. However, "[p]laintiff's failure to prove delivery of [the property] to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property." Internal citations omitted. *Jones v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2005-09341-AD, 2006-Ohio-365, ¶ 10. Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Corr. Inst.*, Ct. of Cl. No. 2002-05751, 2005-Ohio-4455; *obj. overruled*, 2005-Ohio-5068.

{¶10} Plaintiff has the burden of proving, by a preponderance of the evidence, that plaintiff suffered a loss and that this loss was proximately caused by defendant's negligence. *Coffman v. Mansfield Corr. Inst.*, 10th Dist. Franklin Co. No. 09AP-447, 2009-Ohio-5859, ¶ 9.

{¶11} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant's conduct is more likely a substantial factor in bringing about the harm. *Parks v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 1985-01546-AD (1985).

{¶12} To recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining plaintiff's claim. If plaintiff's evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, plaintiff fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82, 118 N.E.2d 147 (1954).

{¶13} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212

(1967), paragraph one of the syllabus. The court is free to believe, or disbelieve, all or any part of each witness' testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E.2d 548 (1964). The court finds plaintiff's statements regarding his lost property persuasive.

{¶14} Defendant admits liability for the lost property in this matter, acknowledging negligent acts which resulted in plaintiff's property being lost or stolen.

{¶15} The only issue left is damages. 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). As the trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. S. Ohio Corr. Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶16} Reasonable certainty as to the amount of damages is required, which is that degree of certainty to 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). 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).

{¶17} This court has the authority to determine depreciation based on the age of the property in question. See *Weaver v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2011-10134-AD (2012); and *Woodward v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2016-00267-AD (2016); and *Bonnette v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2017-00187-AD (2018).¹

{¶18} Plaintiff's JS-10 player was seven years old at the time of loss. Therefore, this item is subject to depreciation.² Therefore, the value of the JS-10 player at the time

¹ The court will utilize the depreciation guide found at www.claimspages.com to determine which items are subject to depreciation, their depreciation rate, and their current value.

² For both the JS-10 player and the drum machine, the court will use a 4% per year depreciation rate, which is the rate for musical instruments and supplies costing over \$250.00 new from www.claimspages.com.

of loss was \$360.00. Plaintiff's drum machine was six years old at the time of loss and its depreciated value was \$196.85.

{¶19} Therefore, judgment is rendered in favor of plaintiff in the amount of \$556.85.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

{¶20} 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 \$556.85. Court costs are assessed against defendant.

HOLLY TRUE SHAVER
Deputy Clerk