

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

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IN THE CLAIMS COMMISSION
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2014 APR 10 A 9:34

RONNIE BALL,)
) Claim No. T20120131
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,)
) Regular Docket
 Defendant.)

JUDGMENT FOR CLAIMANT

This claim came on for trial before Robert N. Hibbett, Commissioner and judge of the facts and the law, on January 29, 2014 in the Cocke County Courthouse in Newport, Tennessee. Assistant Attorney General Rebecca Lyford represented the State of Tennessee. Hon. Thomas V. Testerman, Esq. represented the Claimant, Ronnie Ball. This is a claim for negligent care, custody or control of personal property. The transcript of the trial was filed with Clerk of the Claims Commission on March 14, 2014.

This case originated out of the 4th Judicial District Drug Task Force seizure of three vehicles, a Corvette, a Dodge, a red Ford pickup truck, and \$6,600.00 in cash when Claimant's residence and business were searched in December 2007. Claimant filed a petition for return of the vehicles and money.

The Administrative Law Judge forfeited the vehicles and money on April 13, 2008. This forfeiture was upheld by the Appeals Division of the Department of Safety on January 3, 2009. Claimant appealed the forfeiture to the Davidson County Chancery Court styled *Ronnie Ball v. Dave Mitchell, Commissioner of the Tennessee Department of Safety*, No. 09-600-1. A hearing was held before Chancellor Bonnyman on August 25, 2010, and her decision was entered on September 13, 2010. She affirmed the forfeiture of the truck and money, but ordered the Dodge van and Corvette to be returned to Claimant.

However, the Dodge van had been sold by the Drug Task Force at auction in June of 2010, and the Corvette was sold at auction on October 9, 2010. Therefore, the return of the vehicles to the Claimant was a legal impossibility.

The State has already admitted in its Answer to this action that the Claimant is entitled to a judgment for the fair market value of these vehicles as a result of these sales. Before the trial of this case, the parties entered into an agreement as to the damages owed for the loss of the Dodge van so this Judgment shall not address that vehicle. The only issue before the Tribunal is the fair market value of the Corvette.

Findings of Fact

The Claimant, Ronnie Ball, bought the 1980 Corvette at auction for approximately \$2,500.00. The car was in very poor condition and he spent considerable time, labor and expense in reconstructing it over the years. He and his brother, Wayne Ball, worked together in the reconditioning. They removed the original engine and replaced it with a big block Chevy 350 engine that only had approximately six thousand miles on it. The engine had 12,000 miles on it when it was seized. They had the transmission rebuilt by a local professional. The exhaust system was completely redone and enhanced which was made necessary by the new engine. The suspension system was repaired along with replacing the shocks, brakes and drums. They had another shop do a four wheel alignment and replaced the aluminum wheels with chrome wheels. The tires on the Corvette were only three months old when law enforcement seized it.

The Claimant replaced the mechanisms and the fittings of the T-top and the windshield. He replaced the headlight and taillight systems, including the pumps that raise and lower the headlights. The back bumper also had to be replaced.

The interior of the car was completely reconditioned with new seats, console, steering wheel, instruments with glass covers, upholstery, door panels, arm rests and electrical switches. The wiring harness was replaced by a third party. A new radio with speakers was installed. The whole body was sanded down and repainted. This is but a short summary of the work and improvements made to the Corvette over a fourteen-year period. At the time of the seizure, it was the Claimant's opinion that the Corvette was worth \$21,000.00. The Tribunal accredits the testimony of the Claimant as to the restoration of the Corvette and its condition at seizure.

The Claimant called his brother, Wayne Ball, to testify concerning the work done on the Corvette before its seizure and how its value was enhanced. He has worked many years restoring automobiles and did all the paint and body work on his brother's car. In great detail, he explained how he repainted the vehicle to a very high quality finish that sparkled. He also corroborated much of the Claimant's testimony as to the reconstruction of the car. The Tribunal accredits the testimony of Mr. Wayne Ball.

Timothy E. Strange was called to testify by the Claimant. Mr. Strange owns a restoration and collision shop in Newport named Strange's Custom Auto.

Mr. Strange started to do restoration work on old and classic cars in 1976. He testified that he has monitored the values of classic cars since 1982. He has also attended multiple classic car shows and probably bought ten in his lifetime. He also has been asked to give his opinion as to the value of classic cars by individuals. Mr. Strange has bought, restored and then sold a Corvette. The Tribunal accepted Mr. Strange as an expert of collision repair and restoration of classic cars although he admitted he was not an expert on the value of 1980 Corvettes. Mr. Strange opined that the Corvette was worth \$18,000.00 to \$20,000.00 before it was seized by law enforcement. The Tribunal accredits the expert testimony of Mr. Strange and finds that it has aided the Tribunal to apply the facts to the law.

The State called Mr. Rodney Manning to testify concerning how the Corvette was sold at auction. Mr. Manning is a realtor and auctioneer for Jackson Real Estate and Auction. The auction company mailed eighty-seven fliers concerning the auction to car dealers in East Tennessee. The company also advertised the auction in at least three different East Tennessee newspapers. There were twenty-two other seized and surplus vehicles sold at this particular auction. There were 172 or 173 registered bidders at the auction. He testified that

the Corvette sold for \$7,810.00. He further testified that the Corvette was sold without warranty and that no one drove it or had it inspected by a mechanic. However, bidders were allowed to start the engine before the auction. The Tribunal accredits the testimony of Mr. Manning.

Mr. Steven Stockwell was called to the stand to testify concerning the online efforts to advertise the auction. Mr. Stockwell is the IT professional for Jackson Real Estate and Auction. He sent 14,416 emails to advertise this particular auction of which 1,563 were opened by recipients. This email went to everyone that they had done business including auctioneers and real estate companies. The email included a visual tour of all the vehicles in the auction and the lead image was of the Corvette. 162 recipients looked at the visual tour. He also advertised the auction on Craigslist, AuctionZip and on the company's own website. It appears to the Tribunal that the Corvette in question was featured prominently in the advertising. The Tribunal accredits the testimony of the witness.

The State called Byron Cooper to the stand to testify as an expert on valuation of Corvettes and specifically the car at issue in this matter. Mr. Cooper has worked on, painted, restored, bought and sold Corvettes his entire work life.

He owns and operates Cooper's Corvette Center in Knoxville, Tennessee. He buys and sells between twenty-five and thirty-five Corvettes a year for the last twenty years. He buys and sells Corvettes at auctions and is a sponsor of Corvette Expo held in Sevierville, Tennessee for thirty-seven years. Mr. Cooper testified that the first time that he saw the Corvette in question was in the summer of 2013 to appraise it. He did not know the condition of the car when it was seized in 2007 or when it was auctioned in 2010. He testified about many defects that he observed in the car when he appraised it. It was his opinion that it was better to have all original equipment to enhance the value of a Corvette instead of upgrades. According to him, a collector Corvette would have the original engine even if it could be replaced by a better engine. He gave an example of an equivalent year Corvette that had been sold recently at auction in Florida. It was in excellent condition and was auctioned for \$12,500.00 plus a seven percent fee (which would total \$13,375.00). He testified that a Corvette of this type and year would bring \$22,000.00 if it was a Show Quality car. A car rated excellent would have the value of \$15,400.00. A car rated as fine condition would be valued at \$9,900.00. A good condition car would have the value of \$4,400.00. He rated the Corvette in question between good and fine condition

when he saw the car in 2013. At the time that he appraised the car, he gave it a fair market value of \$7,900.00. Although the value of his testimony is limited by the fact that he appraised the Corvette in 2013 and it was seized in 2007, the Tribunal accredits the testimony of Mr. Cooper and finds he has aided the Tribunal to apply the facts to the law.

Conclusions of Law

The Tribunal is called to adjudge the fair market value of this Corvette at the time that it was seized. The law on this subject is quite certain:

The measure of damages for personal property either lost or destroyed is the fair market value of such property at the time and place of its loss or destruction.

8 Tenn. Prac. Pattern Jury Instr. T.P.I.-Civil 14.42 (2013 ed.)

The problem for the Tribunal is that the fair market value at the time of its seizure is not known and can never be known. It was not sold at the time of its seizure and therefore, its fair market value at the time of the Claimant's loss cannot be fixed using market forces. In the meantime, we are not certain of how it was stored by law enforcement or whether it was driven and maintained until its auction in October, 2010. We also do not know how it was maintained, used, or stored after it was sold at auction until it was appraised in 2013. These are all

unknowns out of the control of the Claimant and the Tribunal finds that the testimony of the Claimant and his witnesses concerning the condition of the vehicle before seizure must be given great weight.

The starting point for any discussion of whether a claimant has established, by a preponderance of the evidence, the amount of his loss is the Western Section Court of Appeals' decision in *E. L. Reid v. State* 9 S.W.3d (Tenn. Ct. App. 1999) (perm. app. denied, Nov. 22, 1999). There, Judge Farmer, speaking for a unanimous court, said the following:

As a general rule, damages for the loss or destruction of personal property are measured by the market value of the property at the time of its loss. ... Alternatively, if no market for the property exists, or if the market value is inadequate, the proper measure of damages for the loss of personal property is the actual value of the property to the owner. ... In either event, damages are calculated with reference to the date of the loss of the property, not the date of its acquisition or purchase by the owner.

E. L. Reid v. State 9 S.W.3d (Tenn. Ct. App. 1999) (perm. app. denied, Nov. 22, 1999)

The Tribunal also feels compelled to mention an unreported case from the Court of Appeals concerning the adjudication of the fair market value of a Corvette. *Davenport v. Bates*, M2005-02052-COA-R3CV, 2006 WL 3627875 (Tenn.

Ct. App. Dec. 12, 2006) In that case, a repossessed Corvette was sold to a wholesaler for \$12,500.00. However, a jury fixed the fair market value at \$17,500.00 at the time of repossession. The Court upheld the jury's valuation that was based on the opinion of a car salesman and the lay opinion of the plaintiff.

The Tribunal cannot accept, on face value, Mr. Cooper's opinion of the fair market of value of the Corvette in question because of the length of time between loss and appraisal and other variables. What is probative is Mr. Cooper's estimation of value based on the relative condition of any 1980 Corvette. He indicated that a 1980 Corvette with original parts and in excellent condition would be valued at \$15,400.00. Also probative is that he had witnessed a 1980 Corvette in excellent condition auctioned shortly before the trial of this matter for \$12,500.00 plus a seven percent fee.

The State has implied the Tribunal should accept the auction price of \$7,810.00 as the fair market value. The Tribunal declines to do so because: (1) This was a large auction with twenty-two other seized or surplus vehicles with other items. (2) Despite the publicity, there were only 173 bidders present. (3) It is unknown how many bidders were there for the Corvette. (4) No one was allowed to drive or have the Corvette inspected before auction. (5) The auction

occurred after almost three years of storage. (6) The Corvette was sold with absolutely no warranty or promises as to its condition.

The Tribunal cannot reject, out of hand, the lay opinion of the Claimant because he knew the car better than anyone and also knew what he would have accepted for it. However, his estimation of the price is probably related more to what he personally expended to put the car in excellent condition rather than what it would have brought on the open market. The Tribunal also recognizes Mr. Strange's expertise and the fact that he observed the car before it was seized. Although he is an expert on classic cars and restoration, he admitted he was not an expert on 1980 Corvettes specifically. However, the Tribunal accepts the testimonies of the Claimant, Wayne Ball and Mr. Strange as to the condition of the Corvette before seizure. It appears that the Corvette was in excellent condition at seizure and should be valued as such. The fact that the car had an engine with only 12,000 miles on it should be considered also.

After considering the totality of the evidence and the opinions, the Tribunal finds that the fair market value should be placed at \$14,000.00. Again, it is impossible to fix fair market value of a vehicle in 2014 that was seized in 2007. However, this figure seems appropriate to compensate the Claimant for his loss.

IT IS, THEREFORE, ORDERED, DECREED AND ADJUDGED:

1. That Judgment is rendered to the Claimant in the amount of \$14,000.00 as the fair market value of the 1980 Corvette.
2. That the court costs, including that of the court reporter, are taxed to the State of Tennessee.
3. This is a final judgment.

ENTERED this 8 day of April 2014.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as Trial Judge of Record
By Interchange

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 10th of April, 2014.

Paula Swanson

PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission