

segregation on July 1, 2014, his property was returned to him but his beard trimmers were missing and his hotpot was broken.

The State has proffered the affidavit of Officer Kory L. Godwin. He states that on June 2, 2014 he noted that the hot pot was broken when he received it from the Claimant. He makes no reference to the beard trimmers on June 2, 2014 although he mentions that it was not found in a prior inventory.

Pursuant to a request for discovery, the State has admitted that the personal property inventories of March 26, 2014 and April 15, 2014 are no longer in existence or were not retained more than a year after the events in question. However, the State did provide all available TOMIS records related to the Claimant's Offender Property lists. The lists show that the Claimant did, in fact, own a set of Norelco Beard Trimmers. The Claimant has provided proof that the beard trimmers cost \$11.40.

Conclusions of Law

Considering the affidavit of Officer Godwin, the Claimant has not proven, by preponderance of the evidence, that the hot pot was broken while in the custody of the State. Therefore, no award shall be made for the hot pot.

However, the proof is clear and convincing that the beard trimmers were owned by the Claimant and they were on his property list at the time of his segregation. The preponderance of the evidence shows that the trimmers were negligently lost by the State while the Claimant was in segregation.

The State raises the affirmative defense that recovery of damages are limited to current fair market value (or “yard-sale value”) of used items of indeterminate quality, condition, composition, age, or functional capability.

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. ¹

¹ Although the Court did not find it necessary to decide this issue, it did discuss whether or not claimant Reid’s affidavit filed in support of his damage claim was adequate. *Id* at 794-795.

A second decision, *Crawford v. Delta Airlines, Inc.* No. 02801-9612-CV-00296, 1997 WL 576535 (Tenn. Ct. App., 1997), involved a claim by an airline passenger that Delta had lost her luggage. Judge Tomlin, writing for a unanimous court, cited two Court of Appeals' decisions, *Cook & Nichols, Inc. v. Peat, Marwick, Mitchell & Company*, 480 S.W.2d 542, 544 (Tenn. Ct. App. 1971) and *Clift v. Fulton Fire Ins. Co.*, 315 S.W.2d 9 (Tenn. App. 1958), in holding that plaintiff did not adequately prove her damages. The court quoted extensively from *Clift* which observed that decision explained with "the greatest clarity" the concept of "value to the owner".

Clift, in discussing the valuation of lost property where there existed no market for the property or where the market value was inadequate, held that the proper measure of damages was "actual cash value" of that property. Judge Felts explained as follows:

The phrase "the actual cash value", in the law of insurance as well as in the law of damages, may mean "market value", or the more elastic standard of "value to the owner". If the goods are readily replaceable in a current market, "market value" is the measure; but if there is no market, or if the market value is inadequate, the proper measure is the "value to the owner", or the loss he suffers in being deprived of the goods. McCormick on Damages (1935 Ed.), 170-171; *Third*

National Bank v. American Equitable Ins. Co. of New York, 27 Tenn. App. 249, 270-271, 178 S.W.2d 915, 924.

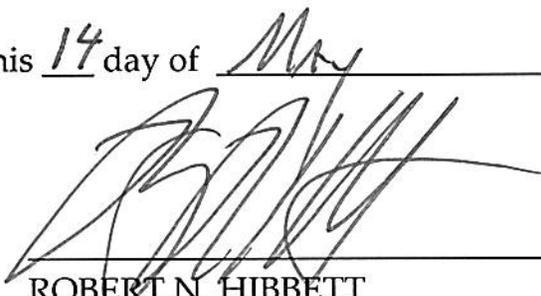
“This doctrine [of ‘value to the owner’] is most frequently and conveniently resorted to in cases of loss of, or damage to, articles which the plaintiff has acquired for personal or domestic use and not for business purposes, such as household goods, clothing, pictures, books, and the like. While usually these things have some slight value for sale at secondhand, this market value would be a very inadequate compensation to the plaintiff who acquired them for use, not for sale. The fact that the property was of this character, that is, used clothing or household goods intended for the owner’s use, is a sufficient showing that the market value as **12 secondhand goods is an inappropriate standard, and “the casual holdings that proof must be made that there is not market value can hardly *489 be supported.” McCormick on Damages, *supra*, 171.

In ascertaining the value of goods under this more elastic standard of “value to the owner”, evidence of the original cost, of the cost of replacement, the condition of the goods, the use to which they were being put, and all other relevant facts, are to be taken into consideration. *Clift*, 315 S.W.2d at 488 (Citing McCormick on Damages, *supra*; *Third National Bank v. American Equitable Ins. Co. of New York*, *supra*. *Id.* at 488-489).

While as the State argues the depreciated value of the inmate's lost property must be taken into consideration, the *Clift* court set out other factors which must also be assessed in determining the value of those items.²

In the instant case, the Claimant shall be awarded the full cost of the beard trimmers. **The Tribunal finds that Derrick McClure shall recover \$11.40 for the loss of his beard trimmers. The Tribunal denies his claim for the alleged damage to his hot pot.**

IT IS SO ORDERED this 14 day of May, 2015.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

² In *Reid*, the court specifically declined to address the issue of whether loss of use and enjoyment of the property constituted actual damages under Tenn. Code Ann. § 9-8-307(d) *Reid* at 794, FN 7.

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:

ERIC FULLER
Attorney General's Office
P.O. Box 20207
Nashville, TN 37202-0207
(615) 532-2563

DERRICK McCLURE #270409
TCIX
1499 R.W. Moore Memorial Hwy.
Only, TN 37140

This 16th day of May, 2015.

Paula Merrifield

PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission