

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE

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GEORGE ISAAC HERNANDEZ, JR. #446319,)
)
 Claimant,) Claim No. T20150931
)
 vs.)
)
 STATE OF TENNESSEE,)
)
 Defendant.) Regular Docket
)

JUDGMENT FOR CLAIMANT

This matter came before Robert N. Hibbett, Commissioner and judge of the facts and law. This is a claim for negligent care, custody or control of personal property proceeding on affidavits pursuant to Tenn. Code Ann. § 9-8-403(h). The Claimant, George Isaac Hernandez, Jr., is an inmate in the custody of the Tennessee Department of Correction (TDOC). Claimant alleges that his property was lost by correctional officers while he was in segregation.

In his original claim, Claimant states he was moved to another unit at Deberry Special Needs Facility and was not allowed to pack his property. When his property was returned to him twelve days later, most of his personal property had been lost and was never found. He listed fourteen items of property that were lost with a total value of \$306.52. The State answered the

claim denying the negligence of the State and denying that Claimant's property was lost, stolen, or damaged during the period Claimant was housed in segregation.

Findings of Fact

Claimant's Sworn Statements

Claimant was moved from Unit 7-B to 7-C on September 9, 2014 for mental observation. He was not allowed to pack any of his personal property. On September 15, 2014, he was moved back to Unit 7-B and was told to wait until the next morning to receive his personal property. On September 16, 2014, unit officer Jose Negrin returned his personal property. Claimant went through his property in front of Officer Negrin and showed him all the receipts for the items that should have been returned him but were missing. Claimant noticed there were not any inventory sheets or papers for him to sign stating he had received all his property pursuant to TDOC property policy. Claimant spoke to Unit Director Felix Mitchell concerning his missing property. On September 18, 2014, Claimant was informed the property room did not have any more of his property. The Court finds the foregoing statements made by the Claimant are believable and are accredited.

Claimant filed an affidavit (Exhibit B) stating that when he received his property on September 16, 2014 from Officer Jose Negrin, no property inventory was completed pursuant to TDOC policy and the following property was missing:

| | | |
|---|--------------|----------|
| 1. Russell workout shorts | Value: | 11.35 |
| 2. Nike overplay shoes | | 31.45 |
| 3. Koss CL-20 headphones | | 15.70 |
| 4. Reebok cruise cross trainers | | 23.05 |
| 5. Sorin vs. Tibalt Magic The Gathering Duel Deck | | 29.99 |
| 6. Benser vs. Koth Magic The Gathering Duel Deck | | 27.49 |
| 7. Izzet vs. Golgari Magic The Gathering Duel Deck | | 27.99 |
| 8. Lilliana vs. Garruk Magic The Gathering Duel Deck | | 60.95 |
| 9. 100 rare/uncommon Magic The Gathering cards | | 17.48 |
| 10. How to Find Out Anything: From Extreme Googling | | 14.20 |
| 11. Sensuality: Caramel Flava II | | 13.89 |
| 12. Purple Panties: An Eroticanoir.com Anthology Book | | 13.24 |
| 13. Merry Christmas, Alex Cross | | 12.99 |
| 14. Alex Cross, Run | | 6.95 |
| | Total Value: | \$306.52 |

The Claimant has proffered the statement of Officer Jose Negrin; however, the statement is not notarized and therefore, inadmissible.

Evidence and Admissions of the State

The State has submitted the statement of Chris Brun, acting compliance manager for TDOC. The statement is not notarized and is inadmissible. However, had it been an admissible statement, it was conclusive and based on hearsay. Therefore, it would not have been probative or credible. The State filed no other affidavits or documentary evidence in this matter.

The State responded to the Claimant's Request for Admissions. The Court will incorporate the State's responses pursuant to the Rules of Civil Procedure:

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission...

Tenn. R. Civ. P. 36.02

The following are the Claimant's statements and the State's responses:

1. The Claimant was moved from Unit 7-B to 7-C and was not allowed to pack his own property on September 9, 2014. **Response:** Admitted only insofar as to the statement that on or about September 9, 2014, Claimant was temporarily moved to segregated housing. Denied as to the allegation that Claimant was not allowed to pack his own property.

2. The Claimant was placed in a mental health seclusion cell without any of his property on September 9, 2014. **Response:** Admitted that per policy Claimant was not permitted to have all items of his property while temporarily housed in segregation.
3. Admit that per TDOC policies 504.02 and 502.01 an inventory of the Claimant's property was suppose(d) to be completed, utilizing forms CR-1412 and CR-1413 and provide a copy of these forms that were used to inventory the Claimant's property. **Response:** Admitted that Claimant accurately summarizes the relevant content of TDOC policies numbered 504.02 and 502.01. Defendant objects to the second clause of this request as it is actually a request for production of documents and outside the scope of discovery permitted per the Commission's Order.
4. Admit that per TDOC Policy 504.02 that the filing of form CR-1412 and CR-1413 shall be retained by the sending institution for a period of at least two years. **Response:** Admitted that Claimant accurately summarizes the noted and relevant content of TDOC policy 504.02.
5. Admit that per TDOC Policy 504.02 all property forms are to be forwarded to the institutional records office room for scanning into the DSRS.

Response: Admitted that Claimant accurately summarizes the noted and relevant content of TDOC policy 504.02.

6. Admit that there was never a proper inventory done of the Claimant's property and if this is denied then provide all of the proper forms that were completed when the inventory was done like forms CR-1412 and CR-1413. **Response:** Denied as to the allegations that the inventory conducted was improper. Defendant objects to the second clause of this request as it is actually a request for production of documents and outside the scope of discovery permitted per the Commission's prior Order.
7. Admit that the proper handling of the Claimant's personal property might have been mishandled and not handled properly. **Response:** Denied as to any allegation that any of Claimant's property was lost, damaged, or destroyed as a result of State negligence.
8. Admit that on September 16, 2014 at approximately 6:30 am the Claimant was given his property back by Officer Jose Negrin who was the unit's officer and that the Claimant showed Officer Jose Negrin all of the stuff he was missing. **Response:** Objection: this request is compound, vague, and ambiguous, and requires the State to admit or deny multiple events

involving a private alleged conversation which allegedly took place between Claimant and a corrections officer. Insofar as any response is possible, Defendant denies any items of Claimant's property were lost, damaged, or destroyed as a result of State negligence.

9. The Claimant was not given a property sheet to sign stating that he had received all of his property back on September 16, 2014. **Response:** Insofar as this request might be construed as a request to admit or deny the current existence of a property sheet signed by Claimant on September 16, 2014, Defendant admits no such document has been discovered, filed, or submitted.

Because of the amount of money in controversy, the Court directed the State to only respond to the Request for Admissions instead of answering interrogatories and requests for production of documents. The State did not file any documents to defend against this claim. Any and all inventory documents, if they existed, would have been in the custody of the State. Once the Claimant made a prima facie case of negligent loss of property, which he did, it was incumbent on the State to file documents that would have defended against the

claim. The State did admit, however, a property sheet signed by the Claimant has not been “discovered, filed, or submitted.”

Conclusions of Law

Liability

Although this is a Regular Docket Claim, subject to appeal, trials are not conducted on inmate property claims.

(h) Claims based on the negligent care, custody or control of personal property by persons in the legal custody of the state shall proceed on affidavits only, except where the commission determines that witnesses should be heard.

Tenn. Code Ann. § 9-8-403(h).

The only admissible evidence before Court are the affidavits, TDOC polices, and receipts of purchases filed by the Claimant. It is clear from the statements of the Claimant that his property was placed in the property room of the facility while he was placed in segregation for mental observation. He was not allowed to pack his own property. Upon his transfer to his original cell, not all of his property was returned to him. The State owed a duty to the Claimant to safeguard his personal property pursuant to statute. The State failed in that duty and negligently lost his property. Therefore, the State is liable for the loss of the Claimant’s personal property.

Damages

The State raises the following affirmative defense in this matter concerning damages:

“3. Recovery of damages for the Claimant, if any are deemed appropriate in this case, are to be assessed at the current 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 in 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).

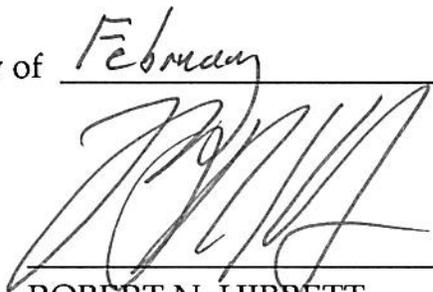
While as the State argues the depreciated value of the inmate's lost property must be taken into consideration, the *Clift* court set out other factors which must also be assessed in determining the value of those items.²

The Court in the instant claim accredits the Claimant's valuation of his property based on his affidavit and the receipts of purchases he has filed. The Court finds that the original cost of the goods lost by the State should be awarded as damages. Therefore, the Claimant is awarded \$306.52 in damages for his negligently lost property.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. The State of Tennessee is found liable for the loss of Claimant's property.
2. That the Claimant is awarded \$306.52 in damages.
3. That this is a final judgment.

ENTERED this 16 day of February, 2016.



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:

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This 19th day of Feb., 2016.

Paula Merrifield

PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission