

[Cite as *Noble v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7248.]

IN THE COURT OF CLAIMS OF OHIO

ADAM NOBLE II :
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 Plaintiff :
 :
 v. : CASE NO. 2006-02838-AD
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 DEPARTMENT OF CORRECTION : MEMORANDUM DECISION
 AND REHABILITATIONS :
 :
 Defendant :

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{¶ 1} Plaintiff, Adam Noble II, an inmate incarcerated at defendant's Trumbull Correctional Institution ("TCI"), asserted his legal materials were confiscated and subsequently destroyed by TCI employee C.O. Williams on March 18, 2005. Plaintiff explained he conducted legal research at the TCI law library during the early afternoon of March 18, 2005, and left about 1:30 with a folder of legal documents to go to the TCI chapel library. According to plaintiff, when he arrived at the chapel carrying his folder of legal documents, he was told by C.O. Charles Williams, who was on duty there, that he was not permitted to possess legal material in the TCI chapel. Plaintiff stated he then left the chapel walking out into the institution yard where he met a fellow inmate and asked this inmate to take his folder of legal documents back to his cellblock living quarters. Plaintiff related the fellow inmate agreed to take the legal papers back to his cell and plaintiff then returned to the TCI chapel where he was stopped by C.O. Williams. Apparently, C.O. Williams noticed papers sticking out of plaintiff's clothes pocket and consequently initiated a pat

down search. Plaintiff recalled C.O. Williams confiscated the papers from him. The confiscated papers were characterized by plaintiff as "legal material." Plaintiff noted the confiscated documents were titled: Lab Fraud, Wrongful Convictions, and Freeing the Innocent: The Lessons Learned From The Fred Zain Affair and In re: An Investigation of the West Virginia State Police Crime Laboratory Serology Division. Plaintiff did not approximate the number of pages comprising the two documents that were stored in his pocket and confiscated by C.O. Williams. Plaintiff did not address the issues concerning why he chose to return to the chapel library carrying seemingly impermissible legal material and why he did not include the confiscated legal material in the folder he requested a fellow inmate return to his cell.

{¶ 2} Plaintiff made several attempts to have his confiscated legal material returned. However, the documents could not be found and probably had been destroyed. Plaintiff recollected he first received the legal material at issue from his brother, who according to plaintiff, purchased the documents from an entity identified as, Innocence Project. Plaintiff asserted his brother purchased the documents [which were subsequently confiscated] from Innocence Project for \$335.00. Plaintiff submitted a copy of correspondence dated September 26, 2005, typed on Innocence Project letterhead and therefore, purportedly from Innocence Project. Plaintiff stated the correspondence was sent from Innocence Project to his brother and then forwarded to him. The correspondence is addressed to Adam Noble #441-492, Trumbull Correctional Institution, 5701 Burnett Road, P.O. Box

901, Leavittsburg, OH 44430-0901. The body of the correspondence refers to the prices for Lab Fraud, Wrongful Convictions, and Freeing the Innocent: The Lessons Learned From The Fred Zain Affair, George Castelle (In Manuscript) . . . \$245.00 and In re: An Investigation of the West Virginia State Police Crime Laboratory Serology Division, 190 W.Va. 321, 323, 438 S.E. 2d 501, 503 (1993) . . . \$90.00. The date, address, salutation, closing, and printed signature lines of the correspondence are typed in a different font style from the body of the letter. Plaintiff alleged defendant should be held liable for the replacement cost of the documents confiscated from him on March 18, 2005. Plaintiff has consequently filed this complaint seeking to recover \$335.00, the stated replacement value of the seized documents. Plaintiff also seeks \$15.00 in damages for postage and copying costs. Postage and copying costs are not recognizable damage elements in a claim of this type and are therefore denied. The issue of postage and copying expenses shall not be further addressed. Plaintiff was not required to pay a filing fee. Plaintiff's damage claim is set at \$335.00.

{¶ 3} Defendant denied any liability in this matter. alternatively, defendant disputed plaintiff's damage claim as excessive. Defendant contended the submitted letter purportedly from the Innocence Project, offered as proof of damages, is a fabrication. Defendant pointed out the differences, "between the typing of the body of the letter, and the typing in the greeting and closing of the letter," as support for the contention the body of the letter was not typed by the Innocence

Project personnel. Defendant further contended plaintiff failed to produce proof the seized documents were purchased by him or purchased for him. Although, defendant acknowledged papers were confiscated from plaintiff, defendant asserted plaintiff failed to prove he was the true owner of the documents or the replacement cost of the seized documents. Defendant suggested plaintiff proximately caused the loss of the legal papers by returning to the TCI chapel with the documents in his possession after being given a direct order to remove all legal material from chapel premises. Furthermore, defendant submitted evidence purporting personnel from the Innocence Project denied drafting the correspondence plaintiff offered as proof of the replacement cost of the confiscated papers.

{¶ 4} Plaintiff responded to defendant's investigation report by insisting he owned the seized documents and the documents were truly valued at \$335.00. Plaintiff maintained the confiscated documents were not contraband and were destroyed without proper authorization. Plaintiff denied he disobeyed a direct order to remove all legal material from the TCI chapel. Plaintiff related he did remove all legal material from the TCI chapel he was ordered to remove. Plaintiff asserted he is entitled to all damages claimed.

{¶ 5} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions

regarding ownership and replacement cost of the confiscated documents to be particularly persuasive.

{¶ 6} Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. In the instant claim, plaintiff failed to offer sufficient proof he legitimately owned the confiscated papers.

{¶ 7} It has been previously held, an inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. However, plaintiff must prove he was the rightful owner of the destroyed property and the destroyed items were permissible.

{¶ 8} If plaintiff owned the seized papers at the time he entered the institution chapel, when plaintiff was ordered to remove legal documents from the chapel and then chose to return carrying legal documents, he effectively abandoned all ownership rights in the impermissible property. It was held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD. Plaintiff's claim is denied.

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ADAM NOBLE II :

Plaintiff :

v. :

CASE NO. 2006-02838-AD

DEPARTMENT OF CORRECTION :
AND REHABILITATIONS :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

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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 defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Adam Noble II, #441-492
5701 Burnett Road
Leavittsburg, Ohio 44430

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
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1050 Freeway Drive North
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For Defendant

RDK/laa

7/27

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