

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

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COMMISSION  
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LEVAR LEE #351692, )  
 ) Claim No. I20130274  
 Claimant, )  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 ) Regular Docket  
 Defendant. )

**FINAL JUDGMENT FOR CLAIMANT**

This came before Robert N. Hibbett, Commissioner and judge of the facts and law. This regular docket prisoner property claim is being adjudicated on the record without a trial pursuant to T.C.A. 9-8-403(h).

(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 issue in this claim is whether or not the State was negligent in its handling of Mr. Lee's property when he was placed in segregation.

The authority of the Claims Commission to render damages is set forth by statute. If a claim falls outside of the categories specified in Tenn. Code Ann. § 9-8-307(a), then the State retains its immunity from suit, and a claimant may not

seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). The Claims Commission has authority to adjudicate this matter under Tenn. Code Ann. § 9-8-307(a)(1)(F) concerning the negligent care, custody or control of personal property.

In order to establish a claim under Tenn. Code Ann. § 9-8-307(a)(1)(F), the Claimant must prove the elements of common law negligence: (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App. 2001).

### **Findings of Fact**

Because of the hearsay rule, the Tribunal shall not discuss every affidavit or every statement in the affidavits. The Tribunal shall only discuss the evidence that is germane to the Tribunal's findings.

### **Affidavits of Claimant**

While being incarcerated at Turney Center Industrial Complex (TCIX), he was taken to segregation on April 30, 2012. He was not given the opportunity to pack his property located in his cell in Unit 2. He requested an officer locate his

property and return it. He had a disciplinary hearing on May 16, 2012 and requested another officer retrieve his property from Unit 2. On May 17, 2012, an officer brought some of his property to him. Another officer brought several bags of property that had been ripped open. Claimant filed a grievance and sent messages in an attempt to locate and retrieve his property. After he was released from segregation on June 1, 2012, he was sent to Unit 2 to retrieve more missing property. Also, he retrieved some property from the office of L. Dickson and Corporal C. Jones brought more property to him. He was never provided a copy of an inventory form or storage request form.

In a separate affidavit, the Claimant alleges the following items became missing during his segregation:

1. Volumes 1-10 of Ibn Kathir Tafir priced at \$200.00.
2. Volumes 1-5 of Sunaqn Abu Dawood priced at \$119.00.
3. Volumes 1-4 of Al-Hadith Mishkat ul-Masabih price at \$39.95
4. Joyce Meyer Everyday Life Bible priced at \$79.99
5. Clear tunes 8" fan priced at \$23.95
6. 100 pages of court transcripts @.20 per page totaling \$20.00
7. 200 pages of business documents @ .20 per page totaling \$40.00
8. Floppy discs containing copies of all business documentation
9. Small business CD-ROMS

According to the Claimant, his damages total \$522.89.

### **Affidavit of LaVance Carter**

LaVance Carter was an inmate assigned to Cell 2B-218 with the Claimant. On April 30, 2012, he was given instructions to pack the Claimant's property. He packed all of the Claimant's personal property including a fan, religious materials and other miscellaneous books and paperwork. The religious materials included the Holy Qur'an, Bible, Ibn Kathir Tafsir Volumes -1-10, Abu Dawud Volumes 1-5, and Al Hadith Volumes 1-4. He also packed several folders containing Islamic literature.

### **Affidavit of Sergeant Jason Clendenion**

Sergeant Clendenion is Chairperson of the Disciplinary Board at TCIX. He conducts disciplinary hearings and investigations involving disciplinary matters. In May of 2012, he recalls asking Sergeant Christine Middleton about property in her office belonging to LeVar Lee. He recalls seeing some CD-ROMS in the said property.

### **Affidavit of Sergeant David Breece**

Sergeant Breece is the Institutional Investigator at TCIX. He conducts investigations of inmate claims of personal property loss. He was responsible for the loss of property claim filed by LeVar Lee. His investigation revealed that no

commissary items were lost and the Claimant's television was returned to him. The only remaining items in question were the fan, various books and documents claimed by Lee to be missing. He found no evidence to determine the whereabouts of the missing items. He did not find any evidence that these items were confiscated or that Lee was ever in possession of said items.

### Discussion

The State has admitted that the Claimant was placed in punitive segregation on April 30, 2012 and various items of personal property were confiscated. As to the request for discovery for the relevant TDOC inventory forms that were supposed to be completed contemporaneous with the confiscation, the State responded as follows:

As to the request for copies of relevant TDOC inventory forms, to include CR-1412 and CR-1412 (sic) forms, despite the diligent efforts of the undersigned to obtain said information, it now appears that no such inventory forms exist. It is unknown whether they were created contemporaneously and subsequently lost, or whether TDOC officials did not fill out the forms during the time periods in question. What is clear is that there are no such forms in Claimant's institutional files and prison investigators have been unable to locate any such inventory forms.

The Tribunal is not authorized to judge what is or what is not proper policy or procedure. Our only concern is adjudicating the issue of missing

property and if the State was negligent in the handling of said property. It appears from the State's pleadings and the affidavit of Sergeant David Breece that the State has no record of what was confiscated from the Claimant or what was returned to him

The Department was clearly careless in inventorying and storing the Claimant's property shown by its lack of documentation. Therefore, the Tribunal can draw no other conclusion that some of the Claimant's property was lost or misplaced by the Department during the Claimant's segregation. The Department undertook a duty to keep the Claimant's property and then return it to him intact. It failed in that duty.<sup>1</sup>

### **Conclusions of Law**

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

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<sup>1</sup> Although its decision is not binding or even evidentiary, it is interesting to note that the TCIX Grievance Board concluded that all property had been given to the Claimant except his religious books and fan. The Warden agreed with the conclusion.

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. .... <sup>2</sup>

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 the actual cash value of that property. Judge Felts explained as follows:

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<sup>2</sup> 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.

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 <sup>\*\*12</sup> secondhand goods is an inappropriate standard, and "the casual holdings that proof must be made that there is not market value can hardly <sup>\*489</sup> 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).

Our Court of Appeals has further refined the inquiry into the valuation of lost or destroyed documents by placing the burden on the plaintiff to prove the necessity of the legal materials to the prosecution or defense of a pending suit.

The burden on the plaintiff is to show the need and importance of the documents to it in the prosecution or defense of the lawsuits, and that without the documents it is hampered or prevented from asserting its prosecution or defense. The defendant can show, on the other hand, the documents are not needed by the plaintiff in the lawsuits; or if needed, the information they contain can be otherwise submitted.

*Cook & Nichols, Inc. v. Peat, Marwick, Mitchell & Co.*, 480 S.W.2d 542, 545 (Tenn. Ct. App. 1971)

It appears to the Tribunal that the Claimant is only entitled to reproduction expenses of documents that touch on a pending civil or criminal case or could actually aid him in a future *criminal* proceeding. The Claimant has failed to prove that the legal transcripts are needed for pending or future litigation. Therefore he shall not receive monies for their reproduction.

However, the Claimant has shown that the lost business documents contained his intellectual property; therefore he shall receive \$40.00 for the costs of reproduction. He has not fixed a value for the floppy discs or CD-ROMS; therefore he shall not receive damages for their loss.

The Claimant has proved the loss of his fan and valued it. Because it was used, the Tribunal shall award 75 per cent of its price in the amount of \$18.00.

The Claimant has also proved the loss of several volumes of religious books and materials and has valued them at \$438.94. Even though the Tribunal recognizes the personal value to the Claimant, they must be considered in a used condition and the Tribunal shall award 75% of their value in the amount of \$330.00. The total amount of damages to be awarded to the Claimant totals \$388.00.

**IT IS, THEREFORE, ORDERED:**

1. That the State of Tennessee is found liable for its negligence in the loss of the Claimant's property.
2. That the Claimant is awarded \$388.00 in damages.
3. That the court costs, if any, are taxed to the State of Tennessee.
4. That this is a Final Judgment.

ENTERED this 8 day of December 2014.

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

**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 10<sup>th</sup> day of Dec., 2014.

*Paula Swanson*

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PAULA SWANSON  
Administrative Clerk  
Tennessee Claims Commission