

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 93-1574

Summary Calendar

---

JAMES PETER TAYLOR,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

---

Appeal from the United States District Court  
for the Northern District of Texas  
(4:92-CV-300-A)

---

(August 25, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

James Peter Taylor appeals the district court's judgment in his suit against the United States. Because the district court's assessment of damages was not clearly erroneous, we affirm.

I.

James Peter Taylor, a federal inmate currently incarcerated in Fort Worth, Texas, filed a pro se complaint under the Federal Tort

---

\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Claims Act ("FTCA") in district court seeking \$30,183.90 in damages from the United States for personal property and legal papers which were destroyed while stored in the federal penitentiary in Terre Haute, Indiana.

Taylor alleged that in October 1987, he was transferred from Indiana to the Federal Medical Center in Springfield, Missouri, for treatment. Taylor was not permitted to take most of his personal property and legal papers with him. Prison officials stored seven boxes of Taylor's property in a storage room at the Indiana facility. After Taylor's medical treatment was completed in October 1989, prison officials transferred him to the federal penitentiary in Phoenix, Arizona. After arriving in Phoenix, Taylor learned that the property he had left in storage in Indiana had been damaged as a result of a water leak in the storage area and because of rodent and insect infestation.

Taylor filed an administrative claim against the United States under the FTCA seeking \$10,841.95 in damages for the destroyed property. Taylor alleged that the total cost of the personal items amounted to \$841.95. Taylor further alleged that 10,000 pages of legal papers he had stored in five boxes were destroyed. He placed a value of one dollar per page and requested \$10,000 damages for the lost documents.

After rejecting a settlement offer made by the Government, Taylor filed his complaint in the district court. In addition to the original \$10,841.95, Taylor requested punitive damages of \$10,841.95 and costs of \$3,500, for a total of \$30,183.90.

The Government filed an answer admitting liability for the destroyed property, but contesting the amount of damages claimed. The Government alleged that Taylor was not entitled to punitive damages and that the amount recoverable was limited to the amount requested in the administrative claim, absent a showing of newly discovered evidence. The Government valued Taylor's lost items of personal property at \$276.01 and the legal papers at \$100, for a total of \$376.01.

After protracted discovery proceedings, the case was tried to the district court. At trial, Taylor asserted that he valued the lost property at \$114.816.66. The new damage figure came from a declaration by F. Beai, Jr., Controller for the U.S. Penitentiary at Terre Haute. Prior to trial, the Government submitted Beai's declaration in support of a motion for a protective order. The protective order was sought after plaintiff requested the Government to produce copies of documents, such as commissary receipts, presentence reports, and Bureau of Prison records, dating from 1956 to 1992. Beai's declaration indicated how much it would cost the Government to comply with Taylor's discovery request.

At the conclusion of trial, the district court stated:

The only evidence I have that I consider to be credible evidence and legal evidence as to damages is the government's concession as to what the property was worth and what the damage was, and that is that the personal property, excluding the legal papers, was \$276.01, and that you [Taylor] incurred \$37.50 in replacing personal and legal papers. Apparently the government concedes that.

I haven't received any credible evidence of any other damage.

Therefore, . . . I find that the damages suffered by the plaintiff are the total of those two numbers. . . . that's \$313.51.

This appeal followed.

## II.

Taylor argues that the district court erred by (1) failing to apply Texas law to calculate damages; (2) assessing market value to his destroyed legal papers; (3) failing to award full market value or replacement value for his destroyed personal property; (4) ruling that the original tort claim form must state a sum certain within two years; and (5) ruling that a tort claim applicant could not increase the amount of the tort claim presented to a federal agency. Taylor also seems to argue that the Government acted in bad faith by requesting that he produce copies of the destroyed property and that the Government's failure to make an adequate inventory of his property in 1987 created serious problems with respect to identifying lost property.

Under the FTCA, the United States is liable in damages if a private person would be liable for the same allegedly negligent act or omission under the laws of the state in which the act or omission occurred. Skipper v. U.S., 1 F.3d 349, 352 (5th Cir. 1993), cert. denied, 114 S. Ct. 1220 (1994). "[T]he components and measure of damages in a FTCA case is taken from the law of the state where the tort occurred." Ingraham v. U.S., 808 F.2d 1075, 1081 (5th Cir. 1987). Moreover, an award of damages is a factual finding, and may only be rejected on appeal if shown to be clearly erroneous. Id. See also Fed. R. Civ.P. 52(a).

Since the damage to and destruction of Taylor's property occurred in Indiana, Taylor's contention that the district court erred by failing to follow Texas law is meritless. Indiana law governs the assessment of damages in this case.

Under Indiana law, the plaintiff bears the burden of proving the value of good destroyed. Campins v. Capels, 461 N.E.2d 712, 719 (Ind. Ct. App. 1984). Mathematical certainty is not required, but "an award may not be based upon mere conjecture, speculation, or guesswork." Ashland Pipeline Co. v. Indiana Bell Tel. Co., 505 N.E.2d 483, 489-90 (Ind. Ct. App. 1987). In cases involving personal property, fair market value at the time of the loss is the appropriate measure of damages. Campins, 461 N.E.2d at 719.

Taylor failed to carry his burden at trial. Contrary to his contention, the Beai declaration provides no evidence of the value of his destroyed legal papers. As previously noted, the declaration simply itemized the costs, in terms of working hours, of responding to Taylor's request for production of documents dating back to 1956. Taylor's argument that the district court erred by failing to award him replacement rather than market value for his destroyed personal property and legal documents fails because he did not provide the district court with any evidence of the cost of replacing the documents. Moreover, the district court awarded Taylor damages for the expenses he actually incurred in replacing some of these documents. Accordingly, in view of Taylor's failure to produce credible evidence of his loss at trial,

the district court did not clearly err in assessing Taylor's damages based on the Government's valuations.

Taylor maintains that the district court erred by holding that the original tort claim form must state a sum certain within two years. The Government correctly points out that the district court did not rule on this issue. Issues not raised in the trial court are ordinarily not considered on appeal. Molett v. Penrod Drilling Co., 826 F.2d 1419, 1424 (5th Cir. 1987). Taylor's argument that the district court erred by holding that he could not increase the amount claimed in his administrative claim form fails for the same reason--the district court never ruled on the issue.

To the extent Taylor contends the Government acted in bad faith by requesting that he produce copies of the destroyed documents during discovery, he is misinterpreting the Government's discovery request. The Government asked Taylor to produce: "All documents, whether receipts, invoices, bills, or other items, which document the expenses and costs you have incurred to date in replacing the ruined and destroyed 'documents' as set out in your Complaint in this lawsuit." Taylor's reliance on Adams v. U.S., 615 F.2d 284 (5th Cir. 1980), is misplaced. The issue in that case was whether the plaintiffs had given the Government sufficient information to maintain their FTCA claim in federal court. Adams had nothing to do with the type of information the Government may request during discovery.

Finally, Taylor maintains that the Government's failure to keep accurate and complete written inventory records prevented him

from properly identifying his lost documents. However, even if the government had a duty to inventory the records, Taylor has failed to cite any authority to support the proposition that the Government has a duty to catalogue and keep a detailed inventory of each one of an inmate's personal papers.<sup>1</sup> In addition, Taylor indicated at trial that he went through the documents in Phoenix, salvaged 2,500 pages, but had to discard 10,000 pages. Taylor therefore had an opportunity to inventory the items contained in the boxes and failed to do so. This undercuts his argument that he suffered because the Government did not maintain a sufficiently detailed inventory.

AFFIRMED.

---

<sup>1</sup> Taylor's reliance on Mora v. U.S., 955 F.2d 156 (2d Cir. 1992), is misplaced. Mora, which involved property seized from an individual arrested by the Drug Enforcement Administration (DEA), simply recognized that a Department of Justice regulation requires the DEA to keep an inventory of property seized.