[Cite as *Blocksom v. Mohican State Park*, 2005-Ohio-1395.]

IN THE COURT OF CLAIMS OF OHIO

JELAINE I. BLOCKSOM, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2004-10388-AD
MOHICAN STATE PARK	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} Plaintiff, R.Z. Blocksom, Jr., stated he suffered property damage to his motor home vehicle while backing the vehicle into a campsite lot located at defendant's Mohican State Park. Specifically, plaintiff maintained the roof of his motor home was damaged when it struck a protruding tree branch hanging from a tree at the rear of the campsite lot. Plaintiff explained he inspected the campsite lot before backing his vehicle into it. Furthermore, plaintiff related his wife, Jelaine I. Blocksom, was positioned outside the motor home shouting and signaling for him to stop as he backed the vehicle against the protruding tree branch. According to plaintiff, his property damage incident occurred at approximate 3:00 p.m. on October 21, 2004.

{¶ 2} Plaintiff asserted the tree branch his motor home struck presented a hazardous condition on defendant's premises. Plaintiff professed the branch had been struck prior to his damage event since, "the underside of this remaining branch shows old scrape marks from other collisions." Submitted photographs of the tree branch depict areas where bark has been removed. The trier of fact cannot determine whether these photographs display recent injury,

past injury, or multiple instances of injury to the bark on the tree branch. Plaintiff related a part of the tree branch had previously been pruned. However, plaintiff contended the entire branch should have been removed because it presented a high potential for injury. Plaintiff further contended his property damage was the proximate result of negligence on the part of defendant in failing to hew the tree branch, which allegedly presented a hazardous condition to campers at the Mohican State Park. Consequently, plaintiff filed this complaint seeking to recover $699.21, his cost of repairing his motor home, plus $25.00 for filing fee reimbursement. Plaintiff also claimed postage expense which is not a recognizable element of damages in a claim of this type. The claim for postage is denied and shall not be further addressed. Plaintiff's total damage request amounts to $724.21. The filing fee was paid.

{¶ 3} Defendant argued plaintiff failed to produce evidence to establish his property damage was the sole result of any negligent act or omission on the part of Mohican State Park personnel. Defendant denied the tree branch presented a hazardous condition on the campsite premises. Defendant asserted the tree branch condition was open and obvious. Therefore, defendant contended plaintiff should have exercised reasonable care to protect his property from any threat of damage posed by the overhanging tree branch. Defendant suggested plaintiff's own negligent driving was the sole cause of his property damage.

{¶ 4} Plaintiff stated he did not measure the overhanging branch, but expected his motor home could clear the tree branch when he backed the vehicle into the campsite lot. Plaintiff professed he could not readily discern if his motor home could clear the tree branch without conducting measurements. Plaintiff argued the clearance problem with the tree branch was not open and

obvious until after the damage to his vehicle had occurred. Measurements of plaintiff's motor home set a height of the vehicle at 10'8". The point where the overhanging branch struck plaintiff's vehicle was measured at 10'6". Plaintiff asserted neither he nor his wife could tell by sight the motor home would not clear the overhanging branch.[1]

{¶ 5} Plaintiff was present on defendant's premises for such purposes which would classify him under the law as an invitee. *Scheibel v. Lipton* (1985), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. VanGundy* (1982), 8 Ohio App. 37 72; *Wells v. University Hospital* (1985), 86-01392-AD. As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for plaintiff's safety and warning him of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33.

{¶ 6} However, an owner of a premises has no duty to warn or protect an invitee of a hazardous condition, where the condition is so obvious and apparent that the invitee should reasonably be expected to discover the danger and protect himself from it. *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49; *Blair v. Ohio Department of Rehabilitation and Correction* (1989), 61 Ohio Misc.

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[1] Plaintiff filed a response on February 14, 2005.

2d 649. This rationale is based on principles that an open and obvious danger is itself a warning and the premises owner may expect persons entering the premises to notice the danger and take precautions to protect themselves from such dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642. In the instant claim, plaintiff has failed to present any evidence to prove the campsite tree branch presented anything but an open and obvious condition notwithstanding plaintiff's assertions about the position of the overhanging branch. Additionally, plaintiff has not established any set of facts to show the tree constituted a dangerous condition. Furthermore, the court finds the sole cause of plaintiff's property damage was plaintiff's negligent driving while backing his vehicle. See *Nevins v. West Branch State Park* (2000), 2000-08605-AD. Plaintiff was charged with the duty to exercise ordinary care when backing his vehicle. *Luong v. Schultz* (1994), 97 Ohio App. 3d 472. The comon law of Ohio imposes a duty of reasonable care upon the motorists that includes the responsibility to observe the environment in which one is driving. See *Hubner v. Sigall* (1988), 47 Ohio App. 3d 15, at 17. The court concludes plaintiff breached his duty to exercise ordinary care when operating his vehicle and this breach proximately caused his property damage. *Nationwide Ins. Co., et al. v. Ohio Expositions Center* (2000), 2000-04278-AD.

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JELAINE I. BLOCKSOM, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2004-10388-AD
MOHICAN STATE PARK	:	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 plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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