

[Cite as *Shust v. Ohio Dept. of Transp.*, 2005-Ohio-3246.]

IN THE COURT OF CLAIMS OF OHIO

PAUL M. SHUST :
Plaintiff :
v. : CASE NO. 2005-03806-AD
OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
TRANSPORTATION :
Defendant :
: : : : : : : : : : : : : : : :

{¶ 1} On March 10, 2005, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on January 8, 2005, he was traveling westbound on I-90 towards downtown [Cleveland] just before the East 9th Street exit, when he hit a pothole. As a result of the impact, plaintiff asserts two wheels and tires plus the front passenger wheel bearing were damaged as a result of this incident. Plaintiff seeks reimbursement for his automobile repair costs plus reimbursement of the filing fee which he submitted with the complaint for a total of \$1,072.72 from the defendant.

{¶ 2} On April 7, 2005, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant in pertinent part stated:

{¶ 3} "Defendant has performed an investigation of this site and I-90 and SR 2 branch into four lanes as you approach downtown Cleveland. I-90 does not have an exit for E. 9th Street so plaintiff was actually traveling on SR 2. With this determined, SR 2 @ East 9th Street falls under the maintenance jurisdiction of the City of Cleveland (See Attached Map and Maintenance Agreement). I-

90 does not pick up until E. 30th Street or Dead Man's Curve. As such, this section of roadway is not within the maintenance jurisdiction of the defendant."

{¶ 4} Plaintiff has not responded to defendant's motion to dismiss.

{¶ 5} The site of plaintiff's incident was within the city limits of Cleveland.

{¶ 6} R.C. 5501.31 in pertinent part states:

{¶ 7} "Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.49 of the Revised Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director . . ."

{¶ 8} The site of the damage-causing incident was not the maintenance responsibility of defendant. Consequently, plaintiff's case is dismissed.

{¶ 9} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Paul M. Shust
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Plaintiff, Pro se

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DRB/laa
5/24
Filed 6/1/05
Sent to S.C. reporter 6/24/05