

[Cite as *Riedel v. Ohio Dept. of Natural Resources*, 2005-Ohio-6585.]

IN THE COURT OF CLAIMS OF OHIO

DAWN E. RIEDEL :
Plaintiff :
v. : CASE NO. 2005-06384-AD
DEPARTMENT OF NATURAL RESOURCES: MEMORANDUM DECISION
Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} On April 16, 2005, plaintiff, Dawn E. Riedel, sustained property damage to her boat trailer while launching a boat at the Indian Lake State Park. Specifically, the entire frame of the boat trailer collapsed as plaintiff attempted to tow the trailer from the launch site with a pick-up truck and the wheels of the trailer caught against the end of a concrete dock located at the base of the launch site. The Indian Lake State Park is maintained and operated by defendant, Department of Natural Resources. Plaintiff filed this complaint seeking to recover \$1,607.13, the total value of her boat trailer, which she contends was destroyed as a proximate cause of defendant in maintaining a defective condition on State Park premises. The filing fee was paid.

{¶ 2} Defendant, Department of Natural Resources, has denied liability based on the fact plaintiff was a recreational user of defendant's premises at the time of the property damage occurrence. Defendant explained the boat launch ramp at Indian Lake State Park is open to the public free of charge and plaintiff did not pay a fee to use the facilities.

{¶ 3} Plaintiff did not respond to defendant's investigation report.

CONCLUSIONS OF LAW

{¶ 4} Since this incident occurred at Indian Lake State Park, defendant qualifies as the owner of the "premises" under R.C. 1533.18, et seq.

{¶ 5} "Premises" and "recreational user" are defined in R.C. 1533.18, as follows:

{¶ 6} "(A) 'Premises' means all privately-owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶ 7} "(B) 'Recreational user' means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of the premises, other than a fee or consideration paid to the state or any agency of the state, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, swim, operate a snowmobile or all-purpose vehicle, or engage in other recreational pursuits."

{¶ 8} R.C. 1533.181 states:

{¶ 9} "(A) *No owner, lessee, or occupant of premises:*

{¶ 10} "(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶ 11} "(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use." (Emphasis added.)

{¶ 12} Pursuant to the enactment of R.C. 2473.02(A), the definition of premises in R.C. 1533.18(A) effectively encompassed

state-owned lands. *Moss v. Department of Natural Resources* (1980), 62 Ohio St. 2d 138. R.C. 1533.18(A)(1), which provides, inter alia, that an owner of premises owes no duty to a recreational user to keep the premises safe for entry or use, applies to the state. *Fetherolf v. State* (1982), 7 Ohio App. 3d 110. Plaintiff is clearly a recreational user, having paid no fee to enter the premises. Owing no duty to plaintiff, defendant clearly has no liability under a negligence theory. Even if defendant's conduct would be characterized as "affirmative creation of hazard," it still has immunity from liability under the recreational user statute. *Sanker v. Ohio Department of Natural Resources* (1982), 81-04478-AD; *Howard v. Ohio Dept. of Natural Resources* (2002), 2001-11146-AD.

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|-----------------------|---|--------------------------------|
| DAWN E. RIEDEL | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2005-06384-AD |
| DEPARTMENT OF NATURAL | : | <u>ENTRY OF ADMINISTRATIVE</u> |
| Defendant | : | <u>DETERMINATION</u> |

: : : : : : : : : : : : : : :

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:

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For Defendant

DRB/RDK/1aa
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