

[Cite as *Jordan v. Hocking Hills State Park*, 2005-Ohio-5746.]

IN THE COURT OF CLAIMS OF OHIO

DENNIS R. JORDAN :
Plaintiff :
v. : CASE NO. 2005-08140-AD
HOCKING HILLS STATE PARK : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} On July 6, 2005, plaintiff, Dennis R. Jordan, filed a complaint against defendant, Hocking Hills State Park, alleging his truck camper was damaged as a result of negligence on the part of defendant's employee in conducting lawn maintenance activity on State Park grounds.

{¶ 2} Plaintiff seeks damages in the amount of \$415.00, the total cost of truck repair, plus \$40.00 for mileage and fuel costs incurred to arrive at the repair site. Plaintiff noted he carries insurance coverage for damage to his truck camper. The insurance coverage is subject to a \$100.00 deductible. Plaintiff denied receiving any insurance payments to offset the cost of repairing his vehicle. The \$25.00 filing fee was paid.

{¶ 3} On September 6, 2005, defendant filed an investigation report admitting liability for plaintiff's loss, but asserting recovery should be limited to the insurance coverage deductible amount and filing fee reimbursement.

{¶ 4} On September 26, 2005, plaintiff filed a response to the investigation report expressing his agreement with the defendant's

position.

CONCLUSIONS OF LAW

{¶ 5} Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff's property while conducting lawn maintenance. *Harris v. Caesar Creek State Park* (2001), 2001-07157-AD. In regard to the facts of this claim negligence on the part of defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶ 6} R.C. 2743.02(D) states, in pertinent part: "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant." Awards against the state are subject to collateral recovery actually received, not merely available. See *Eisenbraun v. Ohio Dept. of Transportation* (1987), 86-05201-AD. In the instant claim, plaintiff's damage award can be reduced by insurance proceeds received, which under the present circumstances, is nothing.

{¶ 7} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶ 8} Defendant is liable to plaintiff for all damages claimed, \$455.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

DENNIS R. JORDAN :
 Plaintiff :
 v. : CASE NO. 2005-08140-AD
 HOCKING HILLS STATE PARK : ENTRY OF ADMINISTRATIVE
 Defendant : DETERMINATION

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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 plaintiff in the amount of \$480.00, which includes the filing fee. Court costs are assessed against defendant. 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:

Dennis R. Jordan Plaintiff, Pro se
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 9/23
 Filed 10/7/05
 Sent to S.C. reporter 10/27/05