

[Cite as *Masters v. Ohio Dept. of Natural Resources*, 2005-Ohio-7100.]
IN THE COURT OF CLAIMS OF OHIO

DOUGLAS A. MASTERS :
 :
 Plaintiff :
 :
 v. : CASE NO. 2005-09189-AD
 :
 OHIO DEPT. OF NATURAL : MEMORANDUM DECISION
 RESOURCES :
 :
 Defendant :
 :

{¶ 1} On July 21, 2005, plaintiff, Douglas A. Masters, sustained property damage to his boat when the bottom of his watercraft struck a submerged dredge pipe at the Mary Jane Thurston State Park Marina, a park facility maintained and operated by defendant, Department of Natural Resources ("DNR"). Specifically, plaintiff related the submerged dredge pipe tore off two fins from the bottom of his Malibu ski boat causing the craft to take on large amounts of water. Plaintiff explained the dredge pipe was supposed to be anchored to the bottom of the waterway and created a hazard to navigation at the designated exit from the boat launching area. Plaintiff asserted the damage to his boat was proximately caused by negligence on the part of defendant in not keeping the boat launching exit area free from hazards. Consequently, plaintiff filed this complaint seeking to recover \$250.00, his insurance coverage deductible for boat repair resulting from the July 21, 2005, incident. Plaintiff's damage claim is limited to \$250.00 pursuant to the statutory provision of R.C. 2743.02(D).¹ The filing fee was paid.

¹ 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." Thus, plaintiff's claim for any expense paid by insurance is denied.

{¶ 2} Defendant has denied liability for plaintiff's damage based on the fact plaintiff was a recreational user of DNR premises at the time of the property damage occurrence. Defendant noted the launching facilities at Mary Jane Thurston State Park Marina are open to the public free of charge and plaintiff paid no fee to launch his boat. Plaintiff acknowledged no fee was paid to launch his boat. Despite this acknowledgment, plaintiff insisted in the response to the investigation report his claim should not be barred due to his status as a recreational user.

{¶ 3} Since this incident occurrence at Mary Jane Thurston State Park defendant qualifies as the owner of the 'premises' under R.C. 1533.18, et seq.

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

{¶ 5} "(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.

{¶ 6} "(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 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."

{¶ 7} R.C. 1533.181(A) states:

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

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

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

{¶ 11} "(3) Assumes responsibility for or incurs liability for any injury to person or property caused by an act of a recreational user."

{¶ 12} The state owes no duty to recreational users of state parks, who pay no fee or consideration for admission, to keep the premises safe for entry or use. *Phillips v. Ohio Dept. of Natural Resources* (1985), 26 Ohio App. 3d 77. The recreational user statute applies under the facts of the present claim.

{¶ 13} 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; *Reidel v. Department of Natural Resources* (2005), 2005-06384-AD.

{¶ 14} There is no dispute that plaintiff's property damage occurred on state-owned property while he was engaged in a recreational pursuit. Pursuant to R.C. 1533.18 and 1533.181, the court finds that defendant owed no duty of care to keep the premises safe for use by plaintiff, and, consequently, defendant is not liable for plaintiff's injuries under a theory of negligence. See *Meiser v. Ohio Dept. of Natural Resources*, Court of Claims No. 2003-10392-AD, 2004-Ohio-2097. Therefore, plaintiff's claim is barred by R.C. 1533.181. Accordingly, judgment shall be rendered in favor of 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 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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