

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DAVID R. TERRY

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2010-10874-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On September 28, 2010, plaintiff, David R. Terry, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on September 11, 2010 at approximately 9:30 p.m., as he was traveling southbound on State Route 747 in Butler County, he struck a pothole as he “crossed over the rail road tracks just north of Port Union Road.” Plaintiff seeks damages in the amount of \$894.72, for a new wheel and tire due to the negligence of defendant in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

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

{¶ 3} “Defendant’s investigation reveals that Norfolk Southern Railroad is north of Port Union Road at milepost 2.36 on SR 747 in Butler County (See Exhibit A and destape). Defendant asserts that the location is not the maintenance responsibility of the Department of Transportation.

{¶ 4} “Defendant asserts that it is not responsible for the maintenance of the

roadway within the railroad crossing area . . .” pursuant to R.C. 4955.20.

{¶ 5} Plaintiff has not responded to defendant’s motion to dismiss.

{¶ 6} R.C. 4955.20 in pertinent part states:

{¶ 7} “Companies operating a railroad in this state shall build and keep in repair good and sufficient crossings over or **approaches to such railroad**, its tracks, sidetracks, and switches, at all points **where any public highway**, street, lane, avenue, alley, road, or pike **is intersected by such railroad**, its tracks, sidetracks, or switches.” (Emphasis added.)

{¶ 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 in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
1/25
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