

[Cite as *Neff v. Ohio Dept. of Natural Resources*, 2017-Ohio-2867.]

DAVE NAFF

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL
RESOURCES

Defendant

Case No. 2016-00705-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On September 20, 2016, Dave Naff (hereinafter "plaintiff") filed a complaint in this Court against the Ohio Department of Natural Resources (hereinafter "ODNR"). In his claim, the plaintiff stated that on July 10, 2016, while he was backing his truck down the boat ramp to unload his boat at Indian Lake State Park, his boat unexpectedly tilted and in so doing, the weight caused his truck axle to bend, busting two wheels, ruining two rims and 6 U-bolts. Plaintiff implied that ODNR was negligent in the way that it either had designed, built, or maintained the boat ramp. As a result, plaintiff claims his vehicle was damaged in the amount of \$2,150 and now asks this Court to find ODNR liable for his loss.

{¶2} On November 7, 2016, ODNR filed an investigation report denying that it had any responsibility for plaintiff's loss. ODNR denied liability for plaintiff's damage based on the fact plaintiff was a recreational user of Indian Lake State Park's premises at the time of the property damage occurrence. Defendant stated the boat launching facilities at Indian Lake State Park are open to the public free of charge and plaintiff paid no fee to launch his boat. ODNR contends that the agency is immune from liability to plaintiff who is a recreational user of the state park premises. See *Sorrell v. Ohio Department of Natural Resources* (1988), 40 Ohio St.3d 141, 532 N.E.2d 722; *Phillips v. Ohio Department of Natural Resources* (CA Franklin 1985), 26 Ohio App.3d 77, 26 OBR 252, 498 N.E.2d 230; *Bregant v. Portage Lakes State Park* (2001), 2000-11894-AD;

Ford v. Ohio Dept. of Natural Resources, Ct. of Cl. No. 2007-07205-AD, 2008-Ohio-2852.

{¶3} Since the incident occurred at Indian Lake State Park, ODNR 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:

"(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.

"(B) 'Recreational user' means a person to whom permission has been granted, without 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, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle, or to engage in other recreational pursuits."

{¶5} R.C. 1533.181(A) states:

"(A) No owner, lessee, or occupant of premises:

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

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

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

{¶6} 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*, 26

Ohio App.3d 77, 26 OBR 252, 498 N.E.2d 230. The recreational user statute applies under the facts of the present claim.

{¶7} Plaintiff is clearly a recreational user, having paid no fee to enter the premises. Owing no duty to plaintiff, ODNR thus has no liability under a negligence theory. Even if ODNR'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*, Ct. of Cl. No. 2005-06384-AD, 2005-Ohio-6585.

{¶8} 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 however, the Court finds that ODNR owed no duty of care to keep the premises safe for use by plaintiff, and consequently ODNR is not liable for plaintiff's injuries under a theory of negligence. See *Meiser v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2003-10392-AD, 2004-Ohio-2097; also *Masters v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2005-09189-AD, 2005-Ohio-7100; *Crozier v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2005-11621-AD, 2006-Ohio-7161. Therefore, plaintiff's claim is barred by R.C. 1533.181. Accordingly, judgment shall be rendered in favor of defendant.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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 shall be absorbed by the Court.

MARK H. REED
Clerk