[Cite as *James v. Ohio State Highway Patrol*, 2003-Ohio-3728.]

IN THE COURT OF CLAIMS OF OHIO

MARGARET E. JAMES	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02403-AD
OHIO STATE HIGHWAY PATROL	:	MEMORANDUM DECISION
Defendant	:	

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{¶1} On May 18, 2002, plaintiff, Margaret E. James, was stopped while driving her vehicle by a law enforcement officer identified as Trooper Burgett, an employee of defendant, Ohio State Highway Patrol. After being stopped plaintiff was charged with a violation of R.C. 4511.19(A)(1) (OMVI), a second offense within six years. Based on the charges, Trooper Burgett seized plaintiff's vehicle pursuant to R.C. 4511.195 having the vehicle towed to an impound lot. On September 4, 2002, plaintiff's vehicle was released by order of the Ashland Municipal Court since the seized property had been held for over ninety days constituting fulfillment of any statutorily mandated impound time guideline for an OMVI conviction. Plaintiff paid the impound fees in two installments totaling $1,232.50. On October 9, 2002, plaintiff was acquitted of the OMVI charge at the conclusion of a jury trial. Consequently, plaintiff filed a motion in the Ashland County Municipal Court for reimbursement of the impound fees she had paid.

{¶2} Plaintiff subsequently filed this action against defendant, Ohio State Highway Patrol, alleging defendant should be held liable for reimbursement of the impound fees. Plaintiff contended, defendant's employee, Trooper Burgett, by ordering plaintiff's vehicle impounded, made defendant ultimately responsible for the impound fees when plaintiff was later acquitted of the OMVI charge. Plaintiff not only seeks recovery of the entire amount

of impound fees she paid, but she has also requested filing fee reimbursement and $1,000.00 for attorney fees.

{¶3} Defendant filed an investigation report admitting liability for storage fees incurred from May 18, 2002 through July 10, 2002 in the amount of $632.19. However, defendant denied liability for any additional impound or storage fees incurred. Furthermore, defendant contended plaintiff is not entitled to recover any attorney fees.

{¶4} Defendant explained, plaintiff was initially stopped by Trooper J. L. Burgett, on May 18, 2002, for failure to file an annual application to register her vehicle (expired license plates); a violation of R.C. 4503.11. Incident to this stop, plaintiff was additionally charged pursuant to R.C. 4511.19(A)(1); a second OMVI violation within six years. Based on the OMVI charge plaintiff's vehicle was impounded. The vehicle remained in an impound lot until July, 2002.

{¶5} On July 8, 2002, plaintiff made a request to the Ashland County Municipal Court to have her vehicle removed from the impound lot for storage at a private residence. An order was issued granting plaintiff's request and her vehicle was towed from the impound lot to 404 West Campbell Street, Loudonville, Ohio. After plaintiff's vehicle was removed from the impound lot, an employee of defendant was dispatched to the 404 West Campbell Street residence to immobilize plaintiff's vehicle with a device identified as a "club." However, plaintiff refused defendant's employee any access to her vehicle and consequently, the vehicle could not be immobilized with the club device.

{¶6} On July 18, 2002, Ashland County Municipal Court issued an order authorizing defendant, Ohio State Highway Patrol to reseize plaintiff's vehicle based on plaintiff's refusal to permit vehicle immobilization with the "club" device. Due to plaintiff's noncompliance with the vehicle immobilization and the underlying OMVI charge against plaintiff, the vehicle was again towed to an impound lot. The vehicle was stored at the impound lot until September 7, 2002 when it was released to plaintiff upon payment of towing and storage costs amounting to $600.31. Although the July 18, 2002 court order directing reseizure and impounding of plaintiff's vehicle was partly based on an underlying OMVI charge, defendant has denied liability for this second set of storage costs, despite plaintiff's subsequent acquittal.

{¶7} Plaintiff filed a response insisting she is entitled to all damages claimed. It was acknowledged a court order was obtained authorizing the removal of plaintiff's vehicle from an impound lot to the residence of Phil Flack at 404 West Campbell Street, Loudonville, Ohio. A copy of the court order permitting the removal of plaintiff's vehicle to a private residence was submitted. Language in this order authorizing the Ashland County Sheriff's Department and Ashland Police Department to impose charges for administration of a "club" device upon plaintiff's vehicle had been crossed out or deleted. Relying on this deleted language, plaintiff assumed her vehicle would not be subject to immobilization with a "club" device. The copy of the submitted order specifically states plaintiff's vehicle was being released pursuant to R.C. 4511.195 which contains language directing the immobilization of a released vehicle. Despite plaintiff's assumptions regarding immobilization, R.C. 4511.195 mandates immobilization of a released vehicle.

{¶8} On July 16, 2002, plaintiff was notified by defendant's employees that her vehicle was scheduled to be immobilized with the "club" device. Plaintiff related she was unsure where Phil Flack agreed to have the vehicle stored and immobilized on his property. Therefore, plaintiff asserted she was told by defendant's employee she had twenty-four hours to decide where her vehicle was to be parked on Flack's property and then the vehicle would be immobilized on July 17, 2002. Plaintiff maintained her vehicle was moved to a desired location on Flack's property on the night of July 16, 2002. According to plaintiff, the parked vehicle was examined on July 17, 2002, and the "club" device had not been installed, although the vehicle was left unlocked and parked at an ultimate designated location. On July 18, 2002, plaintiff discovered her vehicle had been removed from its parked location. It was maintained plaintiff was not aware the Ashland County Municipal Court had ordered her vehicle re-seized and impounded. Plaintiff contended she attempted to cooperate with defendant and comply with the order authorizing vehicle immobilization. Plaintiff argued defendant could have immobilized her vehicle, but chose to get permission to have the vehicle re-seized and impounded. Consequently, plaintiff asserted defendant should bear all liability for the second towing and vehicle storage costs. Plaintiff maintained this second towing and impoundment was initiated unnecessarily by defendant. The trier of fact agrees.

{¶9} Plaintiff's claim for attorney fees was reasserted. No authority was offered to establish any right to recover attorney fees in a claim of this type. Attorney fees representing compensable damages have not been sufficiently professed. Any claim for attorney fees is denied. Without some statutory directive, awards of attorney fees are not compensable for actions brought within the Court of Claims. *Drain v. Kosydar* (1979), 54 Ohio St. 2d 49. The state cannot be held liable for other than compensatory damages. *Drain*, Id. Plaintiff, in the instant claim, has not produced any evidence of tortious conduct on the part of defendant that resulted in bearing the expense of engaging legal representation, thereby classifying the expense as compensatory damages.

{¶10} However, the court concludes all of plaintiff's claims for towing and impound fees are compensable and defendant is liable for these expenses. In situations where a motorist is acquitted of an OMVI offense the state is financially responsible for the cost of storage of an impounded vehicle. *State v. Heinrich* (2001), 142 Ohio App. 3d 654. R.C. 4511.195(D)(2) is unconstitutional as applied to vehicle owners who are found not guilty of driving under the influence, but who have been deprived of their vehicles and ordered to pay costs associated with that deprivation. *State v. Posey* (1999), 135 Ohio App. 3d 751. Sufficient evidence has been presented in the present claim to show defendant is liable for all costs of towing and storage claimed $1,232.50, plus the $25.00 filing fee. *Bailey v. Dept. of Rehab. and Corr.* (1990), 62 Ohio Misc. 2d 19.

{¶11} 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 part in the amount of $1,257.50, 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:

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RDK/tad
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