[Cite as *Wicker v. Ohio Dept. of Natural Resources, Div. of Forestry*, 2003-Ohio-6268.]

IN THE COURT OF CLAIMS OF OHIO

ANGELA M. WICKER	:	
Plaintiff	:	
v.	:	CASE NO. 2003-08037-AD
OHIO DEPT. OF NATURAL RESOURCES-DIV. OF FORESTRY	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶1} On May 31, 2003, plaintiff, Angela M. Wicker and her family members camped at the Horseman's Camp on the grounds of Tar Hollow State Park, a facility operated by defendant, Department of Natural Resources. Plaintiff has asserted that during her stay on the campgrounds, a branch from a dead tree fell upon her parked car causing damage to the vehicle's hood, roof, and windshield. Plaintiff filed this complaint seeking to recover $346.21, the cost of a replacement windshield for her car. Plaintiff contended defendant should bear liability for the damage to her automobile. Plaintiff submitted the filing fee with the complaint.

{¶2} Defendant, Department of Natural Resources, has denied liability based on the fact plaintiff was a recreational user of defendant's premises at the time of the property damage occurrence. Defendant explained Horseman's Camp at Tar Hollow State Forest is open to the public free of charge and plaintiff did not pay a fee to use the facilities.

CONCLUSIONS OF LAW

{¶3} Since this incident occurred at Tar Hollow State Forest, 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 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, to enter upon the 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 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." (Emphasis added.)

{¶11} Pursuant to the enactment of R.C. 2743.02(A), the definition of premises in R.C. 1533.18(A) effectively encompassed state-owned lands. *Moss v. Department of Natural Resources* (1980), 62 Ohio St. 2d 138. R.C. 1533.18(A)(1), which provides, inter alia, that an owner of premises owes not duty to a recreational user to keep the premises safe for entry or use, applies to the state. *Fetherolf v. State* (1982), 7 Ohio App. 3d 110. 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. *Banker v. Department of Natural Resources* (1982), 81-04478-AD.

{¶12} 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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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10/17
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