IN THE COURT OF CLAIMS OF OHIO

STEPHEN J. WRIGHT	:	
Plaintiff	:	
v.	:	CASE NO. 2003-11755-AD
OHIO DEPARTMENT OF NATURAL RESOURCES	:	MEMORANDUM DECISION 6/17/04
Defendant	:	

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{¶1} On April 20, 2003, at approximately 9:30 p.m., a camper owned by plaintiff, Stephen J. Wright, was damaged when it was struck by a falling tree limb blown down during the course of a violent storm. At the time of the property damage incident, plaintiff's camper was parked on private property adjacent to the Ellis Lock area of the Muskingum River Parkway State Park, a facility owned and operated by defendant, Department of Natural Resources (DNR). The tree which caused plaintiff's property damage was growing on the state park land maintained by DNR.

{¶2} Plaintiff related that during the summer of 2002, he made a request to DNR personnel to trim rotten limbs from a state park tree located about forty feet from his parked camper. Plaintiff further related DNR employees, "trimmed a limb on the tree, however it was not the limb I complained about." On April 20, 2003, the area where plaintiff's camper was parked was subjected to a severe rain storm with accompanying high velocity winds. Plaintiff stated, that at sometime during this storm, "the rotten limb I complained about fell on my camper." The tree limb fell across the top of plaintiff's camper opening a hole in the camper top and exposing the inside to rain water.

Consequently, rain water damaged furniture and appliances stored inside the camper. Plaintiff asserted his lawn furniture, refrigerator, vcr, television set, and radio were destroyed by water damage. Plaintiff insisted all the damage to his personal property was proximately caused by negligence on the part of DNR personnel in not eliminating a dangerous condition (rotten tree limb) on park premises. Plaintiff filed this complaint seeking to recover $1,500.00, the total replacement cost of the camper, plus $285.00 for the value of furniture and appliances, and $300.00 for what was described as, "labor for clean up/removal of trees." Total claimed damages mount to $2,085.00. The requisite $25.00 filing fee was paid.

{¶3} Plaintiff submitted photographic evidence depicting the tree limb which damaged his camper along with photographs of the damaged camper. Plaintiff contended these photographs clearly show the deteriorated moribund state of the damage-causing tree limb. After review of the photographs, the trier of fact is not convinced the tree limb that fell upon plaintiff's camper was dead or dying. The evidence presented is inconclusive to prove the tree limb in its state on April 20, 2003 presented a particular hazardous condition.

{¶4} Defendant denied plaintiff's property damage was caused by any negligent act or omission on the part of DNR employees. Defendant asserted plaintiff's camper was damaged as a result of a severe rain storm with accompanying high winds of between 50 and 80 mph. Defendant argued plaintiff's damage was attributable solely to an "Act of God" with no negligence involved. According to defendant, several trees on DNR property were downed during the April 20, 2003 storm. Defendant related that several trees in the area around plaintiff's camper had been trimmed by DNR staff between January 6-16, 2003. Defendant believed the trees in the area appeared to be in

good condition after this trimming was completed. Defendant denied the tree limb which struck plaintiff's camper was rotten or presented a danger before the April 20, 2003, storm. Defendant asserted the tree that caused plaintiff's damage was not dead before the incident forming the basis of this claim.

{¶5} In order to prevail, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, the defendant breached that duty, and that defendant's breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282. Defendant was charged with a duty to exercise ordinary care for the safety and protection of plaintiff's property which included maintaining the DNR premises in a reasonably safe condition and warning of known concealed defects or correcting such defects. *Kirby v. Pymatuning State Park #73* (2000), 99-12278-AD.

{¶6} In the instant claim, defendant has insisted no duty owed to plaintiff was breached and plaintiff's injury was not caused by any defective condition. Defendant has asserted plaintiff's property damage was solely caused by an "Act of God."

{¶7} It is well-settled under Ohio law that if an "Act of God" is so unusual and overwhelming as to do damage by its own power, without reference to and independently of any negligence by defendant, there is no liability. *City of Piqua v. Morris* (1918), 98 Ohio St. 42, 49. The term "Act of God," in its legal significance, means irresistible disaster, the result of natural causes, such as earthquakes, violent storms, lightning and unprecedented floods. id. at 47-48.

{¶8} However, if proper care and diligence on the part of defendant would have avoided the act, it is not excusable as an "Act of God." *Bier v. City of New Philadelphia* (1984), 11 Ohio St. 3d

134.

{¶9} In *City of Piqua*, supra, the court stated in paragraph one of the syllabus:

{¶10} "The proximate cause of a result is that which in a natural and continued sequence contributes to produce the result, without which it would not have happened. The fact that some other cause concurred with the negligence of a defendant in producing an injury, does not relieve him from liability unless it is shown such other cause would have produced the injury independently of defendant's negligence."

{¶11} Accordingly the storm occurring on April 20, 2003, was strong enough to cause plaintiff's damage by its own power alone as evidenced by the amount of tree toppled on DNR grounds. See *Passe v. Division of Parks & Rec., etc.* (1998), 98-07840-AD. Plaintiff has failed to produce sufficient evidence to establish defendant acted in a negligent manner regarding tree trimming choices. Therefore, the court concludes no liability shall attach to defendant for damage done by an "Act of God."

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DANIEL R. BORCHERT
Deputy Clerk

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