

[Cite as *All Am. Moving & Storage v. Ohio Dept of Youth Serv.*,
2004-Ohio-4135.]

IN THE COURT OF CLAIMS OF OHIO

ALL AMERICAN MOVING AND STORAGE	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2004-01729-AD
	:	
OHIO DEPARTMENT OF YOUTH SERVICES	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	

.....

FINDINGS OF FACT

{¶1} 1) On December 3, 2003, a vehicle owned by plaintiff, All American Moving and Storage Company, was damaged when it was struck by a malfunctioning automatic gate/fence located at the south entrance of the Training Institution of Central Ohio, a facility operated by defendant, Department of Youth Services.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,064.00, the cost of vehicle repair associated with the December 3, 2003, incident. The requisite material \$25.00 filing fee was paid.

{¶3} 3) Defendant denied any liability in this matter. Defendant denied the gate malfunctioned. Defendant denied any of its employees negligently operated the gate causing damage to plaintiff's vehicle. Plaintiff's vehicle, a single axle truck, painted blue, bore scratches and cuts along the side of the truck bed. Defendant's gate/fence was marked with blue paint from

plaintiff's truck.

{¶4} 4) Sufficient evidence has been presented to establish defendant's gate/fence malfunctioned, resulting in the damage to plaintiff's truck.

CONCLUSIONS OF LAW

{¶5} 1) The traffic gate and the mechanism which governs it is under the exclusive control of defendant. Thus, defendant will be liable for any malfunction which causes damage. *Han v. Traffic Department, Ohio State University* (1981), 81-04575-AD.

{¶6} 2) However, plaintiff has the burden of proving, by a preponderance of the evidence, that the particular traffic gate malfunctioned during normal and intended use. *Saunders v. The Ohio State University* (1993), 93-05245-AD. To make such a showing, plaintiff must produce sufficient evidence or documentation to satisfy the trier of fact. *Id.*;

{¶7} 3) After review of the plaintiff's complaint, the defendant's investigation report and other evidence in the case file, the court makes the following determination. The court concludes plaintiff has proven its vehicle was damaged by a malfunctioning traffic gate arm located on the premises of the defendant. *Consortium Communications, Inc. v. Ohio Department of Youth Services* (2002), 2002-01420-AD. Therefore, defendant is liable to plaintiff or damages of \$1,064.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶8} 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 the amount of \$1,089.00, 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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