

[Cite as *Luberger v. Ohio Dept. of Transp.*, 2004-Ohio-3653.]

IN THE COURT OF CLAIMS OF OHIO

M. JEFFRY LUBERGER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-04345-AD
 :
 OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
 TRANSPORTATION :
 :
 Defendant :
 :
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{¶1} On April 8, 2004, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges his windshield was broken as he was traveling westbound on the Ohio Turnpike (Rt. 80) on March 25, 2004. Plaintiff seeks reimbursement for the windshield replacement in the amount of \$234.85 plus \$25.00 for the filing fee which he submitted with the complaint.

{¶2} On May 4, 2004, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant in pertinent part stated:

{¶3} " . . . plaintiff's incident occurred on Interstate 80 which is part of the Ohio Turnpike. The turnpike is operated and maintained under the authority of the Ohio turnpike commission, and as such the Ohio turnpike commission, rather than the Ohio Department of Transportation, is the proper party in this instance."

{¶4} Plaintiff has not responded to defendant's motion to dismiss. The site of plaintiff's incident was on the Ohio

Turnpike.

{¶5} R.C. 5537.17(A) in pertinent part states:

{¶6} "Each turnpike project open to traffic shall be maintained and kept in good condition and repair by the Ohio turnpike commission."

{¶7} R.C. 5537.17(B) states:

{¶8} "All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation or consideration made therefor out of moneys provided under this chapter."

{¶9} The Ohio turnpike commission may, pursuant to R.C. 5537.04(A)(4), "sue and be sued in its own name, plead and be impleaded, provided any actions against the commission shall be brought in the court of common pleas of the county in which the principal office of the commission is located, or in the court of common pleas of the county in which the cause of action arose if that county is located within this state . . ."

{¶10} Accordingly, the proper party in this action is the Ohio turnpike commission and the Court of Claims does not have jurisdiction to hear matters concerning the Ohio turnpike commission pursuant to R.C. 5537.04(A)(4). Consequently, plaintiff's case is dismissed.

{¶11} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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6/3
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