[Cite as *Rose v. Ohio Dept. of Natural Resources*, 2007-Ohio-3747.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263

www.cco.state.oh.us

ROBERT ROSE

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2006-07252-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Robert Rose, asserted he suffered property damage to his 1994 Chevrolet pick-up truck when the vehicle was struck by a Dodge pick-up truck owned by defendant, Department of Natural Resources ("DNR") and operated by a DNR employee. Plaintiff related, he drove to an auto parts store in McArthur, Ohio shortly before 3:00 p.m. on September 12, 2006, and parked his truck at a parking space in the store's parking lot. State Route 93, a north/south roadway, abutted the entrance to the auto parts store parking area. Plaintiff related he left his parked vehicle went into the auto parts store where he saw DNR employee, Clayton D. Acord. Later, plaintiff left the parts store and reentered his truck to exit the parking lot. Plaintiff recalled he "backed out of [the] parking space and headed south on S.R. 93, ([but] there was traffic coming south so [he] had to wait for probably one minute." Furthermore, plaintiff observed that while waiting for the traffic to clear on State Route 93, "Clayton Acord came out and got into a Green Dodge ODNR vehicle [and] he backed out and hit my vehicle very hard and causing damage to my tailgate, bumper and bumper extension." Plaintiff noted, after this collision in the parking lot, Clayton Acord did not stop the DNR truck, but drove from the scene north on State

Route 93. Plaintiff related he then left his truck and went back into the auto parts store where he made a telephone report of the described incident to local law enforcement. Plaintiff explained that when he reentered the auto parts store he, "had my brother call the police for me, they also told me who was driving the truck."

{¶ 2} After plaintiff made telephone contact, a "Traffic Crash Report" was filed with the Vinton County Sheriff's Office on September 13, 2006. This report recorded plaintiff's vehicle was parked at the incident location but Clayton Acord was not present and had to be summoned to the site, to complete the report. Acord, driving defendant's green pick-up truck arrived at the auto parts store parking lot. In the crash report it was noted, "after unit two (defendant's truck) arrived you could see the paint chips from unit one (plaintiff's truck) on a vice located on the back of the truck."

{¶ 3} Plaintiff asserted he suffered property damage as a proximate cause of negligent driving on the part of defendant's employee. Consequently, plaintiff filed this complaint seeking to recover $736.18, representing truck repair expenses resulting from the September 12, 2006, incident. Plaintiff also seeks reimbursement of the $25.00 filing fee. Plaintiff submitted a photograph depicting the damage to his vehicle. The damage displayed is consistent with damage caused by a low velocity backing collision. The filing fee was paid.

{¶ 4} Defendant asserted plaintiff failed to offer sufficient proof his truck was damaged as a result of negligent driving on the part of DNR employee, Clayton Acord. Although defendant acknowledged the crash report recorded paint chips from plaintiff's truck were observed on the DNR vehicle, defendant denied any responsibility for the damage claimed. Defendant did not include any statements from DNR employee, Clayton Acord regarding the events of September 12, 2006.

{¶ 5} Plaintiff filed a response reasserting the damage to his truck was caused by Clayton Acord backing defendant's vehicle into the back of his vehicle. Plaintiff insisted his recollection of the September 12, 2006, property damage incident is a true and accurate

depiction of the event.

{¶ 6} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus, 227 N.E. 2d 212. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 197 N.E. 2d 548. The court finds plaintiff's assertions persuasive in regard to the location of the September 12, 2006, incident (private parking lot), the circumstances involved, and the description of the collision occurrence.

{¶ 7} R.C. 4511.01(EE) defines roadway as, "that portion of a highway improved, designed, or ordinarily used for vehicle travel." Under R.C. 4511.01(BB), a "street" or "highway" encompasses, "the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicle travel." Parking lots, whether publicly or privately owned, do not appear to fall within that definition.

{¶ 8} In fact, parking lots and private driveways are routinely exempted from the rules that govern the operation of motor vehicles on roads, streets and highways. See, e.g., *Buell v. Brunner* (1993), 10 Ohio App. 3d 41, 460 N.E. 2d 649 (R.C. 4511.38, which requires the operator of a vehicle attempting to travel in reverse to exercise vigilance not to injure persons or property does not apply to vehicle operation in a parking area); *State v. Root* (1937), 132 Ohio St. 229, 6 N.E. 2d 229 (a driveway on the grounds of a state mental hospital is not a road or highway for the purposes of convicting the driver of vehicular manslaughter); and *State v. Benshoff* (March 21, 1990), 9th Dist. No. 2495, 1990 Ohio App. LEXIS 1028 (R.C. 4511.22(A) making it an offense to impede or block the normal movement of traffic, does not apply to a vehicle's operation in a parking area).

{¶ 9} Accordingly, the standard to be applied in this case is the failure to exercise ordinary care to avoid injury to others. *McDonald v. Lanius* (Oct. 28, 1993), Marion App. No. 9-93-23, 1993 Ohio App. LEXIS 5470, quoting, 7 Ohio Jurisprudence 3d (1978) 483-484, Automobiles and Other Vehicles, Section 12. Ordinary care is a degree of care that

an ordinarily reasonable and prudent person exercises, or is accustomed to exercising under the same or similar circumstances. *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318; 544 N.E. 2d 265, 270. In the instant claim, the court finds the facts support the conclusion defendant's employee negligently backed defendant's vehicle and collided with plaintiff's stopped vehicle. Therefore, plaintiff is entitled to all damages claimed that he suffered as a result of the negligent driving involved.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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 $761.18, 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/laa
5/9
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