

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

ANNA L. EDMISTER

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL
RESOURCES

Defendant

Case No. 2007-02068-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Anna L. Edmister, filed this complaint against defendant, Department of Natural Resources (“DNR”), contending DNR was responsible for water damage to her mobile home caused by the inability of DNR personnel to control flood waters from emanating from Lake White. Plaintiff related she has rented a lot at the Pirates Cove Mobile Home Park in Waverly, Ohio, where her mobile home has sat since 2004. The particular rental lot is located adjacent to Lake White, a property where the State of Ohio possesses a flowage easement that permits DNR to maintain a slack water dam for highway purposes and reservoir for water conservation, fishing, and recreation. Plaintiff recalled that on or about October 4-5, 2006, flood water from Lake White reached her mobile home causing substantial damage, despite the fact the lot where the mobile home sits is positioned, “high above the flood level of the lake.” Plaintiff asserted the property damage she suffered which consisted of damage to the mobile home insulation, skirting, and air condition unit, was directly attributable to the failure of DNR personnel to control the flooding lake. Specifically, plaintiff argued her property damage was proximately caused by negligence on the part of DNR in failing to timely open water release gates to allow rising water to flow from Lake White and thereby prevent flooding to adjacent property. Plaintiff stated defendant did not have an authorized DNR employee at the lake, “site with keys to open the lock box to open the

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flood gates.” Furthermore, plaintiff maintained defendant acted negligently in not preparing for an emergency situation to institute some contingency plan to open flood gates when personnel with lock box keys were not on site or unavailable. Plaintiff also related when flood gates were eventually opened, three of the eight gates malfunctioned and needed to be manually opened. Plaintiff reasoned the fact three flood gates could not be opened by mechanical means, constitutes evidence of negligent design or inspection. In essence, plaintiff suggested the delay in opening three flood gates exacerbated the property damage she suffered from the flooding. As a result of the flooding, plaintiff has claimed property damage in the amount of \$2,140.70. The filing fee was paid.

{12} Defendant acknowledged that although DNR does not own Lake White, it does have maintenance responsibilities for the dam on the lake. Defendant stated, “[t]he State of Ohio possesses only a flowage easement that authorizes the state to maintain a slack water dam for highway purposes and reservoir for water conservation, fishing, and recreation purposes up to a spillway elevation of 572.5 feet above mean sea level.” The easement grant enabling defendant to create Lake White also granted defendant the authority to supervise, care for, and control the reservoir created by damming existing waterways. Defendant also was charged with the authority to regulate

the flow of water from the created reservoir. Defendant did not dispute the contention that flooding caused damage to plaintiff's mobile home. However, defendant denied the damage-causing flooding was proximately caused by any negligent act or omission on the part of DNR personnel in maintaining the flood gates or otherwise regulating water levels on Lake White.

{¶3} Defendant countered that the sole cause of plaintiff's property damage was unprecedented amounts of rainfall occurring within a short time span. Defendant produced evidence showing water levels rose rapidly on the creek feeding Lake White due to high rainfall beginning on the night of October 4, 2006 and continuing into the early morning hours of October 5, 2006. It was reported that over 5 ½" of rain fell on the Lake White watershed area during a several hour period spanning October 4, and 5, 2006. This rapid heavy rainfall caused the lake level to rise 4'8" above summer pool in less than three hours. Defendant maintained the severe weather in a short frame of time caused the flooding of outlying areas adjacent to Lake White despite any efforts of DNR personnel to curtail rising water.

{¶4} Defendant submitted a written narrative chronology from DNR employee, Jeff Boester, recording his recollections of the flood event. Boester recalled he received a phone call at home from the Pike County Sheriff's Office about 11:43 p.m. on October 4, 2006, "concerning rapidly rising water levels on the creek feeding into Lake White." Boester responded that he traveled to the lake and in the interim tried unsuccessfully to contact DNR Conservation Aide, David Irvine, to go to the lake and "begin opening the gates." Boester noted he arrived at the lake at approximately 12:20 a.m. on October 5, 2006, and "immediately began to raise the 3 sets of operational gates (6 gates total) the gates were lifted to override position (maximum height)." According to Boester all operational gates were raised to the maximum height within 10 minutes and he observed, "the 5 open gates were still impeding the flow of water even in the up position." Boester recalled one of the gates remained down due to a broken cable. With water levels still rising (about 2-3 feet above the top of the down gates), a wrecker

truck was dispatched to the lake at approximately 12:36 a.m. on October 5, 2006, “to attempt to manually lift the remaining 3 gates.” Boester indicated the wrecker truck could not open the remaining down gates since it was, “impossible to attach a hook to raise them.” Boester related water continued to overtop, “the 3 remaining down gates by 3-4’,” causing him to be concerned with the safety of the dam structure. Boester further related, a work crew from the Ohio Department of Transportation (“DOT”) arrived in the area about 1:15 a.m. on October 5, 2006, and began closing the roadway, State Route 104 (the earthen dam serves as a foundation for State Route 104). Boester recorded the DOT crew had a backhoe and he asked the DOT personnel to use this backhoe to raise the three closed gates. Although he did not see the DOT crew raise the three closed gates, Boester surmised through asking others that all gates were open after 1:30 a.m. but before 3:30 a.m. on October 5, 2006. Boester noted water continued to overtop the lake dam after 2:00 a.m., which continued to heighten his concerns for the integrity of the structure. Continued efforts were made to keep all open gates clear of debris and according to Boester reports were received at about 4:30 a.m. that flood waters were beginning to recede while visual observations revealed water no longer overtopped the dam by 6:00 a.m. In conclusion, Boester observed it was “reported that over 5 ½” of rain fell on the area and Lake White watershed in a short period of time [and] the lake level rose 4’8” above summer pool in less than a 3 hour time period [r]esulting in overtopping of the dam by 20” in some area.”

{¶15} Although evidence suggests DNR personnel had prior knowledge that not all of the dam spillway gates functioned properly, defendant related, “plaintiff’s mobile home would have been flooded, even if all gates had operated normally.” Defendant contended plaintiff failed to produce sufficient evidence to establish her property damage was proximately caused by DNR’s response to the flooding situation from resulting heavy rainfall. Defendant asserted plaintiff in order to prevail in a negligence action must demonstrate: 1) a duty on the part of defendant to protect her from injury; 2) a breach of that duty; and 3) injury proximately resulting from the breach. *Huston v.*

Konieczny (1990), 62 Ohio St. 3d 214, 217; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140; *Thomas v. Parma* (1993), 88 Ohio App. 3d 523. Defendant argued plaintiff failed to establish DNR breached any duty owed to her that proximately resulted in her property damage from flooding. Defendant related DNR exercised reasonable care in responding to the heavy rainfall event and operation of the gates on the morning of the flood. Defendant explained the dam on Lake White was never designed as a flood control dam and the concrete spillway on the dam was never designed to protect nearby property owners from flood hazards associated with “a storm event of the magnitude experienced on October 4-5, 2006.” Defendant further explained that if all the gates on the dam had been fully operational and fully open during the entire storm event, “areas around the upper portion of the lake would still have been flooded.” Defendant specifically denied plaintiff’s damage was caused by any negligent conduct attributable to DNR.

{¶6} This court has previously addressed claims involving property damage caused by a 1989 flooding of Lake White. See specifically, *Kerns v. Ohio Dept. of Natural Resources* (1990), 89-15070-AD, jud. The facts of *Kerns* are similar to the instant claim for example: 1) a camper owned by plaintiffs was parked adjacent to the lake and received damage from flood waters emanating from the lake; 2) flooding occurred when heavy rains fell in the area in a short time span; 3) DNR park manager received a late night phone call informing him of rising waters on the lake and he responded, arriving at the lake some twenty minutes later; 4) within ten minutes after arriving at scene the park manager had opened six of the eight flood gates on the dam; 5) two gates were not operating and had to be manually opened; 6) DNR’s response did not prevent or inhibit substantial flooding. Based on these facts the clerk initially determined sufficient evidence existed to prove defendant was negligent and consequently liable to plaintiffs for the flood damage. The negligence finding consisted of defendant’s failure to control water levels by not responding expeditiously to the danger presented and by maintaining defective gates on the dam. On a Motion for

Court Review, a judge of the Court of Claims reversed the clerk's determination of liability stating, "plaintiff has failed to prove by a preponderance of the evidence that defendant was negligent either in its control of the water level at Lake White or in its response to the problems with the water level created by the unusual weather conditions."

{17} The court finds little or no difference in the facts presented in the present claim or those presented in *Kerns*. Consequently, based on the holding in *Kerns*, the court concludes plaintiff in the present claim has failed to prove her property damage was attributable to any act or omission on the part of DNR.



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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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

10/4

Filed 11/1/07

Sent to S.C. reporter 1/7/08