

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

DAVID FORD

Plaintiff

v.

OHIO DEPT. OF NATURAL
RESOURCES

Defendant

Case No. 2007-07205-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, David Ford, filed this claim against defendant, Department of Natural Resources, seeking \$2,190.00 for damage caused to his boat trailer while launching his boat at defendant's East Fork State Park. Plaintiff relates the damage to his trailer occurred while using the North Shore ramp at East Fork State Park to launch his pontoon boat on July 29, 2007. According to plaintiff he "backed the trailer partially into the water and let another driver back the rest of the way." Plaintiff notes "[f]rom the boat I saw it twist at an angle to the right." Upon observing the problem with his boat trailer plaintiff recalled three or four unsuccessful attempts were made to pull the trailer out of the water and finally the trailer was pulled from the water when one side was lifted. After the trailer was recovered from the water plaintiff examined it and discovered extensive damage including a twisted axle and bent frame as well as other minor damage. Plaintiff stated, "I used the ramp again on August 12, 2007 at 1:00 p.m. and trailer dropped off ramp 2 ½ feet." Plaintiff maintains there were no signs or other notices to serve as warnings that the ramp was unsafe or defective.

{¶2} Plaintiff contends the damage to his boat trailer was proximately caused by negligence on the part of defendant in maintaining an unsafe boat launching ramp on the premises of East Fork State Park. Consequently, plaintiff filed this complaint seeking to recover \$2,190.00, the cost of a new replacement trailer. Plaintiff

acknowledged he is covered by insurance for damage to his boat trailer and received reimbursement from his insurer in the amount of \$1,502.00. The insurance coverage policy has a \$250.00 deductible provision. Plaintiff notes his insurance carrier reported the damaged boat trailer as “a total loss.” Therefore, it appears the trailer had a total value of \$1,702.00. Based on the provisions of R.C. 2743.02(D)¹ plaintiff’s damage claim is limited to his insurance coverage deductible. The filing fee was paid.

{¶3} Defendant denies liability for plaintiff’s damage based on the fact plaintiff was a recreational user of East Fork State Park premises at the time of the property damage occurrence. Defendant observes the boat launching facilities at East Fork State Park are open to the public free of charge and plaintiff paid no fee to launch his boat. Defendant contends the Department of Natural Resources is immune from liability to plaintiff who is a recreational user of the state park premises. See *Sorrell v. Ohio Department of Natural Resources* (1988), 40 Ohio St. 3d 141, 532 N.E. 2d 72; *Phillips v. Ohio Department of Natural Resources* (CA Franklin 1985), 26 Ohio App. 3d 77, 26 OBR 252, 498 N.E. 2d 230; *Bregant v. Portage Lakes State Park*, Ct. of Cl. No. 2000-11894-AD.

{¶4} Plaintiff filed a response insisting the recreational user statute, R.C. 1533.18, et seq. with immunity applications has no bearing on him since he pays boat licensing fees, titling fees, and gasoline taxes. Plaintiff argues his boat trailer was damaged as a proximate cause of negligence on the part of defendant in failing to maintain the North Shore boat launching ramp at East Fork State Park. Plaintiff relates, “I pay taxes and boating registration fees along with buying gas for that boat to use it on the lake and I would think someone would have fore-thought enough to anticipate low water and the effect it would have on launching boats.” The fact that plaintiff pays fees for boating registration and licensing as well as paying gasoline taxes is not disputed. It

¹ R.C. 2743.02(D) states, in pertinent part: “Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.”

is also undisputed that plaintiff did not pay a fee to use the boat ramp at East Fork State Park.

{¶15} Since this incident occurred at East Fork State park, defendant qualifies as the owner of the “premises” under R.C. 1533.18, et seq.

{¶16} “Premises” and “recreational user” are defined in R.C. 1533.18 as follows:

{¶17} “(A) ‘Premises’ means all privately owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶18} “(B) ‘Recreational user’ means a person to whom permission has been granted, without payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, swim, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle, or to engage in other recreational pursuits.”

{¶19} R.C. 1533.181(A) states:

{¶110} “(A) No owner, lessee, or occupant of premises:

{¶111} “(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶112} “(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

{¶113} “(3) Assumes responsibility for or incurs liability for any injury to person or property caused by an act of recreational user.”

{¶114} The state owes no duty to recreational users of state parks, who pay no fee or consideration for admission, to keep the premises safe for entry or use. *Phillips*, 26 Ohio App. 3d 77, 26 OBR 252, 498 N.E. 2d 230. The recreational user statute

applies under the facts of the present claim.

{¶15} Plaintiff is clearly a recreational user, having paid no fee to enter the premises. Owing no duty to plaintiff, defendant clearly has no liability under a negligence theory. Even if defendant's conduct would be characterized as "affirmative creation of hazard," it still has immunity from liability under the recreational user statute. *Sanker v. Ohio Department of Natural Resources* (1982), 81-04478-AD; *Howard v. Ohio Dept. of Natural Resources* (2002), 2001-11146-AD; *Reidel v. Department of Natural Resources*, Ct. of Cl. No. 2005-06384-AD, 2005-Ohio-6585.

{¶16} There is no dispute that plaintiff's property damage occurred on state-owned property while he was engaged in a recreational pursuit. Pursuant to R.C. 1533.18 and 1533.181, the court finds that defendant owed no duty of care to keep the premises safe for use by plaintiff, and, consequently, defendant is not liable for plaintiff's injuries under a theory of negligence. See *Meiser v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2003-10392-AD, 2004-Ohio-2097; also *Masters v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2005-09189-AD, 2005-Ohio-7100; *Crozier v. Ohio Dept. of Natural Resources*, Ct. of Ct. No. 2005-11621-AD, 2006-Ohio-7161. Therefore, plaintiff's claim is barred by R.C. 1533.181. Accordingly, judgment shall be rendered in favor of defendant.

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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

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3/21
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