



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

ALLISON SIMKINS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2011-02123-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACTS

{¶1} 1) Plaintiff, Allison Simkins, filed this action against defendant, Department of Transportation (ODOT), alleging that she suffered property damage to her car as a proximate result of negligence on the part of ODOT in maintaining a hazardous condition on US Route 33/161 in Franklin County. Plaintiff related that she was traveling eastbound on US Route 33/161 on January 29, 2011, at approximately 6:00 a.m. when her vehicle struck a pothole on the center lane “prior to Avery Road/Murfield Dr exit.” The impact of striking the pothole caused tire and wheel damage to plaintiff’s vehicle. In her complaint, plaintiff requested damages in the amount of \$322.34, the stated cost of replacement parts and automotive repair expenses. The filing fee was paid.

{¶2} 2) Defendant filed an investigation report requesting that plaintiff’s claim be dismissed due to the fact that the City of Dublin and not ODOT bears the maintenance responsibility for the section of US Route 33/161 where plaintiff’s incident occurred. In support of the request to dismiss, ODOT stated that, “[d]efendant has

performed an investigation of this site and the City of Dublin takes care of this section of US 33/161 @ Avery/Murfield Road (see Exhibit A).” Defendant submitted documentation (Exhibit A) showing that the particular section of US Route 33/161 in the vicinity of the Avery Road exit is located within the maintenance jurisdiction of the City of Dublin. ODOT advised that, “[a]s such, this section of roadway is not within the maintenance jurisdiction of the defendant.” The site of the damage-causing incident was located in the City of Dublin.

CONCLUSIONS OF LAW

{¶3} 1) R.C. 2743.10(A) provides:

{¶4} “(A) ‘State’ means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. ‘State’ does not include political subdivisions.”

{¶5} 2) R.C. 2743.02(A)(1) states in pertinent part:

{¶6} “(A)(1) The state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G)(1) of section 9.60 and division (B) of section 3737.221 of the Revised Code and subject to division (H) of this section, and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) or (3) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.”

{¶7} 3) R.C. 5501.31 in pertinent part states:

{¶8} “Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.49 of the Revised Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director . . .”

{¶9} The site of the damage-causing incident was not within the maintenance

jurisdiction of defendant. Consequently, plaintiff's case is dismissed.



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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, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff.

MILES C. DURFEY
Clerk

Entry cc:

Allison Simkins
8641 Cadet Drive North
Galloway, Ohio 43119

Jerry Wray, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

SJM/laa
4/29
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