

[Cite as *Campbell v. Ohio Dept. of Natural Resources*, 2017-Ohio-8076.]

MICHAEL CAMPBELL

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL
RESOURCES

Defendant

Case No. 2017-00172-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Michael Campbell (hereinafter “Plaintiff”) filed this claim on February 22, 2017 against the Ohio Department of Natural Resources (hereinafter “ODNR”). Plaintiff seeks \$4,000.00 for the cost of repair and/or replacement of a shed damaged by a tree that fell during a storm. The tree was located on state park property which ODNR maintains and controls.

{¶2} To prevail on his negligence claim, Plaintiff must establish that ODNR owed a duty of care, that it breached this duty of care, and that its breach was the direct and proximate cause of his damages. *Franklin County Dist. Bd. of Health v. Paxson*, 152 Ohio App.3d 193, 203-204, 2003-Ohio-1331, ¶ 30, (10th Dist.). Negligence claims related to hazards or defects normally require notice on the part of the defendant before a duty of care is imposed. As far as claims related to fallen trees, the 10th District has emphasized the requirement of notice. See, *Osborne v. Miami Univ.*, 10th Dist. No. 77AP-249, 1977 Ohio App. Lexis 7365, at *6 (Aug. 4, 1977) (Absent actual or constructive knowledge of a defective condition of a tree, an owner cannot be liable).

{¶3} Notice can be either actual or constructive. Whereas actual notice requires that a party possess first-hand knowledge of a conditions’ existence either through its own observations or through information it receives, constructive notice is based on facts or circumstances which demonstrate that a party, although lacking actual knowledge, should have known about the conditions’ existence. ODNR correctly points

out that constructive notice requires, at the least, evidence of the time that the defect appeared or the time for which it existed.

{¶4} Here, Plaintiff presents no evidence of notice, actual or constructive. Plaintiff points to the fact that the tree fell on his shed as the only basis for liability. Plaintiff, without supporting evidence, asserts the tree was dead before it fell and hit his shed. Even if true, Plaintiff does not present evidence or even assert that ODNR became aware of the tree's condition before it fell. There is no evidence of a complaint or report to ODNR regarding the tree. Further, Plaintiff presents no evidence regarding the length of time the tree was dead before it fell, let alone evidence that the tree was dead for a substantial enough amount of time that the Court could find constructive notice. See, *Vondrell v. ODNR*, Ct. of Cl. No. 2007-3358-AD, 2007 Ohio 7232, ¶ 9 and ¶ 11 (Court found notice where plaintiff presented evidence that tree had been dead for over 5 years before it fell). In fact, Plaintiff himself does not assert that he noticed the tree's condition before its fall. ODNR's lack of notice is fatal to Plaintiff's claim. See, *Pallone v. ODNR*, Ct. of Cl. No. 2010-10505, 2013 Ohio 3639, ¶ 16 (Despite knowledge of some decay, which is present in all trees, ODNR lacked actual or constructive knowledge of a tree's hazardous condition).¹

{¶5} For the reasons stated herein, Plaintiff's negligence claim against ODNR fails and the February 22, 2017 complaint is hereby DISMISSED.

MICHAEL CAMPBELL

Case No. 2017-00172-AD

¹ Having found that ODNR lacked notice and, therefore, did not act negligently, the Court declines to address ODNR's "Act of God" argument.

Plaintiff

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v.

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RESOURCES

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant

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 shall be absorbed by the Court.

MARK H. REED
Clerk