[Cite as *Krakauer v. Ohio Dept. of Transp.*, 2002-Ohio-4623.]

IN THE COURT OF CLAIMS OF OHIO

BETSY KRAKAUER, etc. :
5828 County View Drive
Hamilton, Ohio 45011-2343 : Case No. 2002-03490-AD

Plaintiff : MEMORANDUM DECISION

v. :

DEPT. OF TRANSPORTATION :
DISTRICT 3
:
Defendant

: : : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} On November 21, 2001, plaintiff, Betty Krakauer, and her nineteen month old daughter, Jenna Krakauer, entered a rest stop building adjacent to Interstate 71 north at exit 197 in Wayne County. The rest stop designated as Rest Area 25 is maintained by defendant, Department of Transportation. While plaintiff and her daughter, Jenna were inside the rest area building designated as Building No. 3-085-8135, Jenna came into contact with a heating element located along the building wall raised about fifteen inches from floor level. The heating element, which was covered by a stainless steel plate, was extremely hot and caused a severe second degree burn on Jenna's hand when she leaned against the heating device. Plaintiff sought medical treatment for her child immediately after the injury was observed. Plaintiff filed this

complaint seeking to recover $214.37, her out-of-pocket medical expense incurred for treating her daughter's hand injury. Plaintiff has not sought recovery for pain and suffering, negligent infliction of emotional distress, or any other recognized damages potentially available in a claim of this type. Plaintiff submitted the filing fee with the complaint.

{¶2} Defendant denied liability based on the premise no duty owed to plaintiff's daughter was breached. Defendant contended the only duty owed to a roadside rest area guest was to refrain from wanton or willful conduct, which may result in injury. Defendant asserted plaintiff has failed to show any acts or omissions of a willful or wanton nature occurred resulting in any injuries.

{¶3} On June 6, 2002, plaintiff filed a response to defendant's investigation report. Plaintiff asserted defendant maintained a known hazardous condition at the roadside rest area building. Plaintiff further asserted this hazardous condition caused injury to her minor daughter. Furthermore, plaintiff argued defendant should have installed signs to warn guests about the danger presented by the heating element. Plaintiff essentially contended defendant's negligence resulted in personal injury to her daughter.

CONCLUSIONS OF LAW

{¶4} Ohio law classifies an individual using a public roadside rest area as a licensee. *Provencher v. Ohio Department of Transportation* (1990), 49 Ohio St. 3d 265, at the syllabus. Accordingly, plaintiff was a licensee while at defendant's rest area. Therefore, defendant owed plaintiff's daughter a duty to refrain from wanton and willful conduct which might result in injury to her. Id. at 266.

{¶5} Under existing case law, a licensor does not owe a licensee any duty except to refrain from willfully injuring her and not to expose her to any hidden danger, pitfall, or obstruction. If the licensor knows such a danger is present, the licensor must

warn the licensee of this danger which the licensee cannot reasonably be expected to discover. *Salemi v. Duffy Construction Corporation* (1965), 3 Ohio St. 2d 169, at paragraph two of the syllabus; *Hannan v. Ehrlich* (1921), 102 Ohio St. 176, at paragraph four of the syllabus.

{¶6} "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and *** (c) the licensees do not know or have reason to know of the condition and the risk involved." 2 Restatement of the Law 2d, Torts (1965), Section 342.

{¶7} In the instant claim evidence has established defendant knew about the dangerous condition presented by the heating element, which caused injury to plaintiff's child. Plaintiff indicated the rest area attendant, an agent of defendant, knew about the heat produced from the heating element. Defendant was charged with a duty to warn rest area visitors of this dangerous condition. Defendant failed to provide adequate warnings, which proximately caused the injuries to plaintiff's daughter. Consequently, defendant is liable to plaintiff for the damage claimed $214.37, plus the $25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶8} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶9} IT IS ORDERED THAT:

{¶10} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶11} 2) Defendant (Department of Transportation) pay plaintiff (Betsy Krakauer) $239.37 and such interest as is allowed by law;

{¶12} 3) Court costs are assessed against defendant.

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DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
6/14
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