

[Cite as *Budavich v. Dept. of Natural Resources*, 2002-Ohio-6419.]

IN THE COURT OF CLAIMS OF OHIO

PETER W. BUDAVICH :
519 Ridge Avenue N.W. :
New Philadelphia, Ohio 44663 : Case No. 2002-07886-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPARTMENT OF NATURAL :
RESOURCES :

Defendant :

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

For Plaintiff: Richard L. Stephenson
206 West High Avenue
New Philadelphia, Ohio 44663

For Defendant: Charles G. Rowan, Deputy Chief Counsel
Ohio Department of Natural Resources
1930 Belcher Drive
Building D-3
Columbus, Ohio 43224-1387

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{¶1} Plaintiff, Peter W. Budavich, filed a complaint asserting his car was struck in the rear by a vehicle driven by Daniel W. McMiller. Plaintiff listed the Ohio Department of Natural Resources as the defendant in this action and designated Daniel W. McMiller as an agent of defendant. Plaintiff described the incident forming the basis of his claim. Plaintiff stated, "defendant drove his Dodge Daycota [sic] into the rear of plaintiff's car causing physical injury to plaintiff's person and property damage to plaintiff's car." Plaintiff claimed damages of \$2,000.00 for personal injury and \$500.00 for property damage. Plaintiff related the automotive collision occurred on August 22, 2000. This complaint was filed on August 26, 2002. No further information regarding the events of August 22, 2000 was submitted.

{¶2} Defendant filed an investigation report. Defendant disputed the allegation that Daniel W. McMiller was an agent of the Department of Natural Resources on August 22, 2000. Defendant asserted, "it is the position of defendant, Department of Natural Resources that plaintiff does not state a claim against the State under Chapter 2743 of the Ohio Revised Code."

{¶3} Under R.C. 2743.02 this court has jurisdiction to determine liability against the state for negligent acts committed by state employees and agents acting within the course and scope of their employment. In the instant action plaintiff has failed to offer sufficient evidence to establish Daniel W. McMiller on August 22, 2000, was an agent or employee of the Department of Natural Resources. Plaintiff has also failed to prove he suffered personal injury and property damage as a result of a collision with a motor vehicle driven by Daniel W. McMiller while McMiller was acting in a capacity as an agent of defendant. Consequently, plaintiff's claim is dismissed for failure to establish jurisdiction.

{¶4} Furthermore, R.C. 2743.16(A) states:

{¶5} "(A) Subject to division (B) of this section, civil

actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

{¶6} Plaintiff's cause of action accrued on August 22, 2000. Plaintiff filed this claim on August 26, 2002, more than two years after his cause of action accrued. Even if plaintiff could provide sufficient proof he was damaged by the negligent acts of a state employee acting within the course and scope of his employment, plaintiff's action would be barred by the appropriate statute of limitations.

DANIEL R. BORCHERT
Deputy Clerk

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PETER W. BUDAVICH	:	
519 Ridge Avenue, N.E.	:	
New Philadelphia, Ohio 44663	:	Case No. 2002-07886-AD
Plaintiff	:	ORDER OF ADMINISTRATIVE DETERMINATION
v.	:	
OHIO DEPARTMENT OF NATURAL RESOURCES	:	
Defendant	:	
: : : : : : : : : : : : : : : :		

For Plaintiff: Richard L. Stephenson
206 West High Avenue
New Philadelphia, Ohio 44663

For Defendant: Charles G. Rowan, Deputy Chief Counsel
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Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

IT IS ORDERED THAT:

- 1) Plaintiff's claim is DISMISSED with prejudice;
- 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

