

IN THE COURT OF CLAIMS OF OHIO

BRENNEN JAY FOSTER :
Plaintiff :
v. : CASE NO. 2003-01539-AD
OHIO BUREAU OF MOTOR VEHICLES : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Brennen Jay Foster, stated his automobile was immobilized on or about September 13, 2002, when personnel of the D & B Immobilization Service South placed a club on the vehicle. Plaintiff explained his vehicle was immobilized pursuant to an order issued by the Delaware Municipal Court.

{¶2} 2) Plaintiff has contended he is entitled to reimbursement for immobilization fees, because he was not convicted of any offense carrying a vehicle immobilization penalty. Consequently, plaintiff has filed this complaint against defendant, Bureau of Motor Vehicles, alleging defendant is somehow liable for the immobilization fees incurred which amount to \$177.50.

{¶3} 3) On January 31, 2003, plaintiff submitted the filing fee.

{¶4} 4) Defendant declared the Delaware Municipal Court issued an entry on September 13, 2002, ordering the immobilization of plaintiff's vehicle pursuant to R.C. 4507.38. On October 24, 2002, the Delaware Municipal Court ordered termination of the immobilization. The immobilization was then terminated. Defendant maintained it acted properly in this matter, although the court is uncertain due to lack of disclosure, what role, if any, defendant played in the circumstances involving the immobilization of plaintiff's

vehicle. Neither defendant nor plaintiff have presented evidence to show what kind of relationship, if any, D & B Immobilization Service South has with defendant.

{¶5} 5) Plaintiff submitted receipts totaling \$177.50 showing he paid D & B Immobilization Service South directly for immobilization fees resulting from the September 13, 2002 court order.

CONCLUSIONS OF LAW

{¶6} 1) Under R.C. 4507.38, a person who is arrested for driving under suspension (DUS) and subsequently has the DUS charge dismissed pursuant to a plea agreement is not responsible for bearing the cost of towing and immobilization fees. *D & B Immobilization Corp. v. Dues* (1997), 122 Ohio App. 3d 50.

{¶7} 2) However, the Bureau of Motor Vehicles has no obligation to pay vehicle immobilization expenses which were incurred by a motorist who was charged with driving under suspension and was subsequently found not guilty of the charge. *State v. Yoder* (1998), 127 Ohio App. 3d 72.

{¶8} 3) Accordingly, this court concludes the Bureau of Motor Vehicles shall not be liable for immobilization fees paid by a motorist under circumstances where that motorist is initially charged with driving under suspension and the charge is later dismissed.

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

{¶10} IT IS ORDERED THAT:

{¶11} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶12} 2) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

RDK/laa
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