

[Cite as *Vinson v. Ohio Dept. of Transp.*, 2003-Ohio-2974.]

IN THE COURT OF CLAIMS OF OHIO

ELTON L. VINSON :
Plaintiff :
v. : CASE NO. 2002-09986-AD
OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
TRANSPORTATION :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} THE COURT FINDS THAT:

{¶2} 1) On November 13, 2002, plaintiff, Elton L. Vinson, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on October 17, 2002, while traveling on Harvey Avenue in Avondale, Ohio she struck a manhole cover, which she maintains was raised more than one inch off the street, on the corner of Harvey Avenue and Catherine Street. Plaintiff seeks damages in the amount of \$844.99 for two chrome wheels and one tire. Plaintiff submitted the filing fee with the complaint;

{¶3} 2) On December 19, 2002, defendant filed a motion to dismiss;

~~{¶4}~~ 3) In support of the motion to dismiss, defendant stated in pertinent part:

{¶15} "Harvey and Catherine Streets in the vicinity of plaintiff's incident falls under the maintenance jurisdiction of the City of Avondale. Therefore, the City of Avondale, and not the defendant, is responsible for maintaining the roadway upon which plaintiff's incident occurred, that being Harvey and Catherine

Streets within The City of Avondale";

{¶6} 4) Plaintiff has not responded to defendant's motion to dismiss.

{¶7} THE COURT CONCLUDES THAT:

{¶8} 1) R.C. 5501.31 in pertinent part states:

{¶9} ". . . 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 but . . .";

{¶10} 2) R.C. 723.01 in pertinent part states:

{¶11} "Except as provided in Section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation, and the municipal corporation shall cause them to be kept open, in repair, and free from nuisance.";

{¶12} 3) The site of plaintiff's damage causing incident is not in the maintenance responsibility of defendant. Accordingly, defendant is not the appropriate party to sue in this case.

{¶13} IT IS ORDERED THAT:

{¶14} 1) Defendant's motion to dismiss is GRANTED;

{¶15} 2) Plaintiff's case is DISMISSED;

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Elton L. Vinson Plaintiff, Pro se
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DRB/tad
5/6
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