

[Cite as *Raymond v. Rocky Fork State Park*, 2003-Ohio-6263.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH F. RAYMOND	:	
Plaintiff	:	
v.	:	CASE NO. 2003-06395-AD
ROCKY FORK STATE PARK	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

FINDINGS OF FACT

{¶1} On May 2, 2003, at approximately 10:00 a.m., plaintiff, Joseph R. Raymond, parked his truck at a designated space in the parking area of the East Shore Marina located on the grounds of defendant, Rocky Fork State Park. Plaintiff has alleged that at sometime after he parked his truck the vehicle received body damage when it was struck in the right door by a trash receptacle. According to plaintiff, the trash receptacle had been emptied by defendant's personnel, was left unsecured, and thereby rolled across defendant's parking area into the path of the parked truck. Plaintiff filed this complaint seeking to recover \$618.62, the cost of automotive body repair and related expenses, which plaintiff contends he incurred as a result of defendant's negligence in maintaining the premises. Plaintiff submitted the filing fee with the complaint.

{¶2} Defendant has denied liability based on the contention plaintiff was a recreational user of defendant's premises at the time of the property damage occurrence. Defendant asserted plaintiff did not pay any fee to utilize the facilities at Rocky Fork State Park.

CONCLUSIONS OF LAW

{¶3} Based on the location of the incident forming the basis of this claim,

defendant qualifies as the owner of “premises” under R.C. 1533.18, et seq.

{¶4} “Premises” and “recreational user” are defined in R.C. 1533.18, as follows:

{¶5} “(A) ‘Premises’ means all privately-owned lands, ways, and waters and any buildings and structures thereon, and all state-owned lands, ways and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶6} “(B) ‘Recreational user’ means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, to enter upon the premises to hunt, fish, trap, camp, hike, swim, operate a snowmobile, or all-purpose vehicle or engage in other recreational pursuits.”

{¶7} R.C. 1533.181 states:

{¶8} “(A) *No owner, lessee, or occupant of premises:*

{¶9} “(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶10} “(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use.” (Emphasis added.)

{¶11} Pursuant to the enactment of R.C. 2743.02(A), the definition of premises in R.C. 1533.18(A) effectively encompassed state-owned lands. *Moss v. Department of Natural Resources* (1980), 62 Ohio St. 2d 138. R.C. 1533.18(A)(1), which provides, inter alia, that an owner of premises owes not duty to a recreational user to keep the premises safe for entry or use, applies to the state. *Fetherolf v. State* (1982), 7 Ohio App. 3d 110. Plaintiff is clearly a recreational user, having paid no fee to enter the premises. Owing no duty to plaintiff, defendant clearly has no liability under a negligence theory. Even if defendant’s conduct would be characterized as “affirmative creation of hazard,” it still has immunity from liability under the recreational user statute. *Banker v. Department of Natural Resources* (1982), 81-04478-AD; *Cox v. Department of Natural Resources* (2001), 2001-04573-AD.

{¶12} 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 are assessed against plaintiff. The clerk shall serve upon

all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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10/17
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