[Cite as *Stitt v. Hocking Hills State Park*, 2003-Ohio-6270.]

IN THE COURT OF CLAIMS OF OHIO

TRACY STITT, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2003-08711-AD
HOCKING HILLS STATE PARK	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶1} On July 14, 2003, plaintiff, Tracy Stiff, sustained property damage to his van while parking the vehicle at a designated parking space located on the premises of defendant, Hocking Hills State Park. Specifically, plaintiff's van received body damage when the bumper of the vehicle caught on a piece of rebar protruding from a parking block at the end of the parking space. Tracy Stitt, as owner of the damaged van, filed this complaint seeking to recover $616.69, the cost of van repair which plaintiff contends he incurred as a result of defendant's negligence in maintaining the premises, particularly the parking block at its parking lot. Plaintiffs submitted the filing fee with the complaint.

{¶2} Defendant has denied liability based on the contention plaintiff, Tracy Stitt, was a recreational user of Hocking Hills State Park at the time his property damage occurred. Defendant asserted plaintiff did not pay any fee to utilize the facilities at Hocking Hills State Park.

{¶3} On October 10, 2003, plaintiffs filed a response to defendant's investigation report. Plaintiffs argued they should be entitled to equitable relief despite the fact this claim was based on a request for damages, an at law remedy. Furthermore, this court at the

administrative determination level does not have jurisdiction to grant equity.

{¶4} Plaintiffs have asserted they pay taxes for maintenance of state parks and these tax payments should constitute sufficient fee payment to proscribe application of the recreational user statute. Plaintiffs suggested defendant should act as an insurer to pay their property damage expenses. Plaintiffs contended this claim should be determined on straight negligence principles.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} "Premises" and "recreational user" are defined in R.C. 1533.18, as follows:

{¶7} "(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.

{¶8} "(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."

{¶9} R.C. 1533.181 states:

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

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

{¶12} "(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.)

{¶13} 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.

{¶14} 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 plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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