

[Cite as *Dusan v. Buckeye Lake State Park*, 2003-Ohio-7130.]

IN THE COURT OF CLAIMS OF OHIO

EVA C. DUSAN	:	
Plaintiff	:	
v.	:	CASE NO. 2003-08347-AD
BUCKEYE LAKE STATE PARK	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

FINDINGS OF FACT

{¶1} On the evening of April 21, 2003, plaintiff, Eva C. Dusan, left her home which sets adjacent to Buckeye Lake State Park in Fairfield County. Plaintiff intended to take a walk along the lakefront. Plaintiff walked for a time around the lakefront grounds and decided to return home. On her way back home, plaintiff walked on a concrete sidewalk that abuts several residences facing Buckeye Lake. While walking, plaintiff tripped over a “cracked, uneven, raised section of sidewalk” and fell to the ground. The raised sidewalk area appeared to be located at the front of the home of plaintiff’s neighbor. However, plaintiff claimed the portion of the sidewalk she tripped over was actually located on Buckeye Lake grounds, an area maintained by defendant, Ohio Department of Natural Resources. As a result of her trip and resulting fall from the raised sidewalk, plaintiff suffered bruises and a broken arm. Plaintiff sought and received medical treatment for the injuries she sustained on April 21, 2003. Plaintiff consequently filed this complaint seeking to recover \$1,111.03, the cost of medical care, which plaintiff contends she incurred as a result of defendant’s negligence in failing to properly maintain the sidewalk at Buckeye Lake.

{¶2} Defendant denied liability based on the contention plaintiff was a recreational user of defendant's premises at the time of the personal injury event. Defendant asserted plaintiff did not pay any fee to walk upon the grounds of Buckeye Lake State Park.

CONCLUSIONS OF LAW

{¶3} Based on plaintiff's assertion concerning 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 no 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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