

[Cite as *Ebling v. Ohio Dept. of Transp.*, 2003-Ohio-838.]

IN THE COURT OF CLAIMS OF OHIO

THELMA E. EBLING	:	
119 5 <sup>th</sup> Street N.W.	:	
Carrollton, Ohio 44615	:	Case No. 2002-09617-AD
Plaintiff	:	ORDER DISMISSING
	:	PLAINTIFF'S CASE
v.	:	
DEPARTMENT OF TRANSPORTATION	:	
Defendant	:	

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

For Defendant: Lisa J. Conomy, Chief Counsel  
 Department of Transportation  
 1980 West Broad Street  
 Columbus, Ohio 43223  
 : : : : : : : : : : : : : : :

{¶1} THE COURT FINDS THAT:

{¶2} 1) On October 25, 2002, plaintiff, Thelma E. Ebling, filed a complaint against defendant, Department of Transportation. The plaintiff states on September 9, 2002, she sustained property damage to her vehicle while driving in Wellsville, Ohio on State Route 39 from State Route 7. Plaintiff asserts she struck a pothole in the traveled portion of the highway which caused property damage to her vehicle. She prays for damages in the amount of \$426.36, of which \$250.00 represents replacement of two tires, \$147.36 for seven day car rental, \$4.00 for cost of Highway Patrol Report and \$25.00 for reimbursement of the filing fee which she submitted with the complaint;

{¶3} 2) On December 30, 2002, defendant filed a motion to dismiss;

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

{¶5} "SR 39 in the vicinity of plaintiff's incident falls under the maintenance jurisdiction of the Village of Wellsville . . . Therefore, the Village of Wellsville, and not the defendant, is responsible for maintaining the roadway upon which plaintiff's incident occurred, that being SR 39 within the Village of Wellsville.";

{¶6} 4) Plaintiff did not file a response to defendant's motion to dismiss.

{¶7} THE COURT CONCLUDES THAT:

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

{¶9} "Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by Section 5521.01 of the Revised Code, and except as provided in Section 5501.49 of the Revised Code, 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. . . .";

{¶10} 2) R.C. 723.01 states:

{¶11} "Municipal corporation shall have special power to regulate the use of the streets. 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) Defendant does not have the duty or responsibility to maintain or repair the roadway in question at the site of plaintiff's incident.

{¶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

DRB/1aa  
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