

[Cite as *Loudermilk v. Buckeye Lake State Park*, 2004-Ohio-1344.]

IN THE COURT OF CLAIMS OF OHIO

JACKIE LOUDERMILK :
Plaintiff :
v. : CASE NO. 2003-10406-AD
BUCKEYE LAKE STATE PARK : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} On September 14, 2003, plaintiff, Jackie Loudermilk, was working at the front gate for the boat races at defendant, Buckeye Lake State Park, when a gust of wind blew the gate into the path of plaintiff’s parked car denting and scratching the paint on the vehicle. Plaintiff filed this complaint seeking to recover \$905.28, the cost of repairing her automobile. Plaintiff has implied that defendant, as owner of the damage-causing gate, should bear liability for the cost of repairing her car. Plaintiff submitted the filing fee with the complaint.

{¶2} Defendant denied liability based on the fact plaintiff was a recreational user of Buckeye Lake State Park at the time of the property damage occurrence. Defendant explained Buckeye Lake State Park is open to the public free of charge and plaintiff did not pay a fee to use the facilities.

CONCLUSIONS OF LAW

{¶3} Since this incident occurred at Buckeye Lake State Park, defendant qualifies as the owner of the “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.

{¶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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2/23
Filed 3/3/04
Sent to S.C. reporter 3/19/04