

[Cite as Winters v. Ohio Dept. of Transp., 2004-Ohio-2093.]

IN THE COURT OF CLAIMS OF OHIO

VIVIAN WINTERS :
Plaintiff :
v. : CASE NO. 2003-11101-AD
DEPARTMENT OF TRANSPORTATION : ENTRY OF DISMISSAL
Defendant :

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On October 30, 2003, plaintiff, Vivian Winters, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on May 10, 2003, while traveling on State Route 322 in the Village of Orwell, Ohio, she struck a pothole causing damage to her vehicle. Plaintiff seeks damages in the amount of \$213.75. Plaintiff submitted the filing fee on November 7, 2003;

{¶3} 2) On December 17, 2003, defendant filed a motion to dismiss;

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

{¶5} "Defendant has performed an investigation of this site and this section of SR 322 falls under the maintenance jurisdiction of the Village of Orwell. . . Photos of the area show that the pothole was not in the traveled portion of SR 322 and the last photo shows the pothole was within the corp limit sign for the Village of Orwell . . . As such, this section of roadway is not

within the maintenance jurisdiction of the defendant.";

{¶6} 4) Plaintiff has not responded to defendant's motion to dismiss.

{¶7} THE COURT CONCLUDES THAT:

{¶8} 1) The site of the incident was inside the corporation limits of the Village of Orwell;

{¶9} 2) R.C. 5501.31 in pertinent part states:

{¶10} "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 . . .";

{¶11} 3) The site of the damage-causing incident was not the maintenance responsibility of defendant. Consequently, plaintiff's case is dismissed.

{¶12} IT IS ORDERED THAT:

{¶13} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. Court costs are absorbed by the court. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Vivian Winters
7851 S. 46
Orwell, Ohio 44076

Plaintiff, Pro se

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For Defendant

DRB/laa
3/23
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