

IN THE COURT OF CLAIMS OF OHIO

FRED B. MEISER	:	
Plaintiff	:	
v.	:	CASE NO. 2003-10392-AD
OHIO DEPT. OF NATURAL RESOURCES	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶1} On August 7, 2003, at approximately 12:30 p.m., plaintiff, Fred B. Meiser, parked his car at a designated space in the parking area of the Cleveland Lakefront State Park. Plaintiff has alleged that at sometime after he parked his automobile the vehicle was damaged when a park employee operating a weed eater machine propelled an object into the car's window. Plaintiff filed this complaint seeking to recover \$160.52, the cost of a replacement car window, which plaintiff contends he incurred as a result of defendant's negligence in maintaining the premises. Plaintiff submitted the filing fee.

{¶2} Defendant has denied liability based on the contention plaintiff was a recreational user of defendant's premises at the time of the property damage occurrence. Defendant asserted plaintiff did not pay any fee to utilize the facilities at Cleveland Lakefront State Park.

{¶3} On December 17, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff asserts defendant

should be responsible for the damage to his vehicle.

CONCLUSIONS OF LAW

"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.

{¶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. 1533.181(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. Dept. of Natural Resources* (1982), 81-04478-AD; *Cox v. Dept. 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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