

[Cite as *Clymire v. Ohio Dept. of Transp.*, 2004-Ohio-2104.]

IN THE COURT OF CLAIMS OF OHIO

SCOTT M. CLYMIRE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-02709-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 4	:	<u>ENTRY OF DISMISSAL</u>
Defendant	:	
.....	:	

{¶1} On February 23, 2004, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on January 26, 2004, while traveling northbound on State Route 800 from Mill Avenue, he struck a pothole in the traveled portion of the roadway. Plaintiff seeks reimbursement for his automobile repair costs in the amount of \$475.25 from the defendant. Plaintiff submitted the filing fee with this complaint.

{¶2} On March 16, 2004, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant in pertinent part: "State Route 800 from Mill Avenue, falls under the maintenance jurisdiction of the City of Canton (See Exhibit A). This particular location is also the corporation limit and the dividing line north of the intersection is the city's jurisdiction. Plaintiff did call ODOT's Ravenna Office on February 17, 2004, and he was told then that if he was close to a city limit he had to be sure of his location. Once the claim was filed, it was determined that he was within the city limits of Canton. As such, this

section of roadway is not within the maintenance jurisdiction of the defendant."

{¶3} Plaintiff has not responded to defendant's motion to dismiss.

{¶4} The site of plaintiff's incident was within the city limits of Canton.

{¶5} R.C. 5501.31, in pertinent part states:

{¶6} "Except in the cases 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 . . ."

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

{¶8} 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. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

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Entry cc:

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For Defendant

DRB/laa  
3/31  
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