

IN THE COURT OF CLAIMS OF OHIO

LINDA GUTRIDGE :
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 Plaintiff :
 :
 v. : CASE NO. 2003-10821-AD
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 OHIO DEPARTMENT OF NATURAL : MEMORANDUM DECISION
 RESOURCES, et al. :
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 Defendants :
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{¶1} On September 1, 2002, plaintiff, Linda Gutridge, operated a boat on the waters of Buckeye Lake, premises under the control and care of defendant, Department of Natural Resources (DNR). Plaintiff related she was accompanied by three passengers on the boat, her mother, her seven year old son, and her son's friend, also seven years old. Plaintiff acknowledged the watercraft she operated on Buckeye Lake is owned by her mother, identified as Jean Schubach.

{¶2} Plaintiff explained that as she steered the boat through a "No Wake Zone" on the lake she noticed an approaching patrol boat, owned by DNR and operated by DNR employee, Officer Craig Watson. Plaintiff stated, "when the state patrol boat flashed its lights, I put our boat in neutral to wait." Plaintiff asserted defendant's watercraft neared with its bow pointing directly to the port side of the boat plaintiff controlled. Plaintiff declared the closing patrol craft made, "no attempt to come about or tie up abreast." Furthermore, plaintiff maintained she noticed constant water movement around both her mother's boat and defendant's patrol

craft. As the DNR boat moved closer, Officer Watson began to speak to plaintiff and her passengers. At that moment, according to plaintiff, "the bow of his (defendant's) boat crashed into our port window, throwing glass everywhere, some of which cut my mother's left arm." After this collision, Watson corrected the position of the DNR craft and tied up to the side of the boat plaintiff operated. Plaintiff contended Watson told her that, "he knew better than to approach another boat in that manner, but he did it anyway."

{¶3} The damaged boat was repaired after the September 1, 2002, incident, presumably at plaintiff's expense. Subsequently, plaintiff filed this complaint seeking to recover \$353.94, the cost of repairing the damage to her mother's boat. Plaintiff has argued the boat was damaged as a proximate result of negligence on the part of defendant's employee, Craig Watson, in failing to properly control defendant's watercraft. The requisite filing fee for this complaint was paid.

{¶4} Defendant, Department of Natural Resources, has denied any liability in this matter. Defendant denied DNR employee, Officer Craig Watson, operated DNR's watercraft in a negligent manner. Defendant proposed the watercraft collision forming the basis of this case, "was caused by wave action." Defendant implied negligent operation of a patrol boat was not a factor in the September 1, 2002 property damage event.

{¶5} Defendant submitted a written statement from Officer Watson regarding his recollection of the September 1, 2002 incident. Watson wrote the following: "I approached vessel OH-9545-ZX (the Schubach boat) to make a law enforcement stop. After I put the boat in neutral, I walked to the bow of my boat to grab

vessel OH-9545-ZX. As I was reaching for the boat, a wave pushed my boat and caused the bow of my boat to go through the port side windshield." Watson further noted that when the collision occurred he had placed defendant's watercraft in neutral, but the Schubach boat was, "still moving towards my patrol boat." This statement is in direct conflict to the narrative introduced in plaintiff's complaint where she noted she placed the boat she was operating in neutral and waited for Officer Watson to close with defendant's watercraft. In his report of the collision, Officer Watson drew a diagram in which he positioned the bow of the damaged boat at a point almost perpendicular to the DNR watercraft he operated. This drawing is also inconsistent with the statement conveying the impression the Schubach boat was moving towards defendant's patrol boat.

{¶6} Officer Watson wrote an additional narrative of his remembrance of the September 1, 2002 boat collision. In this narrative, Watson wrote: ". . . [w]hile trying to stop the vessel with the bows facing each other, I put my boat in neutral and signaled by hand for the boat to stop. I stood up and walked to the bow of the patrol boat #115. Vessel OH-9545-ZX continued moving towards my patrol boat. As I leaned out to stop the boat a wave pushed the boats into each other causing the bow of the patrol boat to shatter the port side windshield of vessel OH-9545-ZX."

{¶7} Additionally, defendant related plaintiff, Linda Gutridge, is not the owner of the boat damaged by the DNR watercraft. Defendant pointed out the owner of the damaged boat is plaintiff's mother, Jean Schubach, who has not been made a party to the present claim. The court shall presume Linda Gutridge assumed responsibility for the cost of repairing her mother's boat.

Therefore, she is permitted to pursue this claim in the capacity of a party plaintiff.

{¶8} Plaintiff has maintained the instant action as a negligence claim, wherein she asserted defendant's employee failed to exercise proper care in effectuating a watercraft stop, on open waters, which resulted in property damage to the craft plaintiff operated. In order to prevail on her negligence claim, plaintiff must prove by a preponderance of the evidence, that defendant owed her a duty, defendant breached that duty, and defendant's breach of duty proximately caused her injury. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 295. DNR employee, Officer Craig Watson, owed plaintiff a duty to exercise reasonable care for the safety of other boaters when operating DNR's watercraft on Buckeye Lake. The evidence available tends to show Watson breached this duty while making a law enforcement stop of the Schubach boat. Watson controlled the entire situation while effectuating the law enforcement stop. The greater weight of the evidence shows Watson acted negligently in making a bow approach to the port side of the idling Schubach craft. Watson compounded this negligence by failing to allow for wave wake motion as he closed the DNR boat. Watson effectively set into motion a chain of events which culminated in the DNR craft ramming the boat operated by plaintiff.

Based on the facts accepted as most persuasive, the court finds defendant liable for the cost of repairing her mother's boat. Plaintiff has supplied sufficient evidence to establish the property damage claimed was caused by the negligent acts and omissions of defendant's officer acting in the course and scope of his employment.

{¶9} 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 plaintiff in the amount of \$378.94, which includes the filing fee. Court costs are assessed against defendant, Department of Natural Resources. 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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