

[Cite as *Barkley v. Ohio Dept. of Transp.*, 2005-Ohio-455.]

IN THE COURT OF CLAIMS OF OHIO

DIANE BARKLEY

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Plaintiff

$$\vdots$$

V.

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CASE NO. 2004-09339-AD

OHIO DEPARTMENT OF
TRANSPORTATION

:

ENTRY OF DISMISSAL

:

Defendant

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{¶ 1} On September 23, 2004, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on August 24, 2004, while driving home from work she made a left turn from East 105th Street onto Quincy Avenue and proceeded to make a right turn onto East 93rd Street. Prior to turning onto East 93rd Street, plaintiff traveled under a railroad bridge. While traveling under the bridge, a train caused rocks to fall from the bridge damaging the windshield of plaintiff's vehicle. Plaintiff seeks damages in the amount of \$264.80, which represents \$218.00 for the replacement of the windshield and \$46.80 for work loss plaintiff sustained as the result of having the windshield replaced. Plaintiff submitted the filing fee with the complaint.

{¶ 2} On November 16, 2004, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

¶ 3 “Defendant has performed an investigation of this site and all three streets, East 105th Street, Quincy Avenue and East 93rd Street, fall under the maintenance jurisdiction of the City of Cleveland (See Attached Map). None of these streets are known as a state route. As such, this section of roadway is not within the maintenance jurisdiction of the defendant.”

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

{¶ 5} The site of plaintiff's incident was within the city limits of Cleveland. Furthermore, defendant was not responsible for the maintenance of the railroad bridge or train involved in the

incident.

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

{¶ 7} “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 .”

{¶ 8} The site of the damage-causing incident was not the maintenance responsibility or under defendant’s control. Consequently, plaintiff’s case is dismissed.

{¶ 9} 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Diane Barkley
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Warrensville Hts., Ohio 44122

Plaintiff, Pro se

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For Defendant

Case No. 2004-09339-AD

- 3 -

ENTRY

12/8

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