

[Cite as *Winterbotham v. Ohio Dept. of Transp.*, 2005-Ohio-5749.]

IN THE COURT OF CLAIMS OF OHIO

DARIN M. WINTERBOTHAM	:	
Plaintiff	:	
v.	:	CASE NO. 2005-08646-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT #8	:	<u>ENTRY OF DISMISSAL</u>
Defendant	:	

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{¶ 1} On July 25, 2005, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on June 25, 2005, at approximately 4:15 p.m., while traveling northbound on Clarksville Road (just south of the dam), he struck a pothole in the traveled portion of the roadway which caused damage to the trailer he was towing. Plaintiff seeks reimbursement of repair costs to his trailer which totaled \$550.60. Plaintiff submitted the filing fee with the complaint.

{¶ 2} On August 19, 2005, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant in pertinent part stated:

{¶ 3} "Defendant asserts it is not responsible for the maintenance of the roadway where the pothole was located. Defendant's investigation reveals that Clarksville Road is known as County Road 37 (CR 37) and is not maintained by ODOT. County Road 37 falls under the maintenance jurisdiction of the Warren County Engineer (See Exhibit A). 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. The site of plaintiff's incident was within the maintenance jurisdiction of Warren County.

{¶ 5} R.C. 5501.11 in pertinent part states:

{¶ 6} "The functions of the department of transportation with respect to highways shall be: (A) To establish state highways on existing roads, streets, and new locations and to construct, reconstruct, widen, resurface, maintain, and repair the state system of highways and the bridges and culverts thereon . . ."

{¶ 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 his entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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Case No. 2005-08646-AD

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ENTRY

DRB/laa

9/29

Filed 10/7/05

Sent to S.C. reporter 10/27/05