[Cite as *Meinking v. E. Fork State Park*, 2006-Ohio-1015.]

IN THE COURT OF CLAIMS OF OHIO

JENNIFER MEINKING	:	
Plaintiff	:	
v.	:	CASE NO. 2005-10071-AD
EAST FORK STATE PARK	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On September 17, 2005, at approximately 9:00 p.m., plaintiff, Jennifer Meinking, was backing a 2003 Jeep Grand Cherokee into a vacant campsite pad (site #54) at defendant, East Fork State Park, when the vehicle's tire was punctured by an exposed piece of rebar protruding from the ground at the end of the campsite pad. At the time of the incident, plaintiff was visiting her parents, Terry and Kathleen Meinking, who were the registered campers for campsite #52. The 2003 Jeep Grand Cherokee plaintiff drove is owned by plaintiff's brother, Joseph Meinking. The rebar that punctured the Jeep's tire was intended to serve as an anchor for a concrete bumper block. However, the bumper block had been displaced leaving the rebar anchor protruding about three inches above the road surface at the end of the black top pad for campsite #54.

{¶ 2} Plaintiff has contended the damage to her brother's vehicle was caused by negligence on the part of defendant in maintaining a hazardous condition on park premises. Plaintiff filed this complaint seeking to recover $144.51, the cost of a replacement tire. The filing fee was paid.

{¶ 3} Defendant denied liability in this matter based on the argument plaintiff was a recreational user[1] of the park premises at the time of the property damage occurrence. Defendant

[1] Recreational user is denied in R.C. 1533.18 as follows:

"(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

asserted plaintiff did not pay a fee to enter and use the East Fork State Park and therefore, R.C. 1533.181[2] applies to this claim. Defendant contended plaintiff was a recreational user of the campsite premises at the time of the September 17, 2005, property damage event and consequently, no duty was owed to her to keep the campsite safe; such as preventing hazardous conditions like the exposed rebar. Defendant reasoned because no duty was owed to plaintiff no liability could result from injuries occurring on park grounds.

{¶ 4} Evidence in the instant claim has shown plaintiff's father, Terry Meinking paid $46.00 to defendant to rent a campsite for September 16 and September 17, 2005. Defendant submitted a copy of a receipt reservation form acknowledging payment for campsite rentals. This document notes 5 (five) persons were included on the campsite reservation receipt. The court shall presume one of the five persons noted included plaintiff. It appears payment for plaintiff to use defendant's campgrounds was made on plaintiff's behalf and therefore, the recreational user statute has no application to the facts of the present claim.

{¶ 5} Plaintiff was present on defendant's premises for such purposes which would classify her under law as an invitee. *Scheibel v. Lipton* (1951), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in a reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. VanGundy* (1982), 8 Ohio App. 37 72; *Wells v. University Hospital* (1985), 85-01392-AD. As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for

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agency of the state, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, swim, operate a snowmobile or all-purpose vehicle, or engage in other recreational pursuits."

[2] R.C. 1533.181 provides:
"(A) No owner, lessee or occupant of premises:
"(1) Owes the duty to a recreational user to keep the premises safe for entry or use;
"(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use."

plaintiff's safety and warning her of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33.

{¶ 6} Additionally, it has been previously held "the liability of an owner or occupant to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." 38 American Jurisprudence, 757, Negligence, Section 97, as cited in *Debie v. Cochran Pharmacy Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40.

{¶ 7} "The knowledge of the condition removes the sting of unreasonableness from any danger that lies in it, and obviousness may be relied on to supply knowledge. Hence, the obvious character of the condition is incompatible with negligence in maintaining it. If plaintiff happens to be hurt by the condition, he [she] is barred from recovery by lack of defendant's negligence towards him [her], no matter how careful plaintiff himself [herself] may have been." 2 Harper and James, Law of Torts (1956), 1491, as cited in *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, 48. "In short, if the condition or circumstances are such that the invitee has knowledge of the condition in advance, there is no negligence." *Debie*, at 11 Ohio St. 2d 38, 41.

{¶ 8} In the instant case, it is not obvious or apparent plaintiff had any knowledge of the protruding anchor rebar and displaced parking block. Considering a driver's position in a vehicle, and the position of the protruding rebar on the ground, it is probable the rebar was never seen as plaintiff backed in the parking space. Therefore, the court finds defendant had superior knowledge of the hazardous condition and failed to warn plaintiff of the condition or remove it. Consequently, defendant is liable to plaintiff for the property loss claimed, $144.51, plus the $25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

JENNIFER MEINKING :

Plaintiff :

v. : CASE NO. 2005-10071-AD

EAST FORK STATE PARK : ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant :

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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 $169.51, which includes the filing fee. Court costs are assessed against defendant. 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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