

[Cite as *Graham v. Ohio Dept. of Transp.*, 2006-Ohio-7139.]

IN THE COURT OF CLAIMS OF OHIO

MELISSA GRAHAM	:	
Plaintiff	:	
v.	:	CASE NO. 2005-11558-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF DISMISSAL</u>
Defendant	:	
: : : : : : : : : : : : : : : :		

{¶ 1} On December 14, 2005, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on April 27, 2005, at approximately 7:15 a.m., while traveling on U.S. 23 in the right hand lane between the 2500 and 2600 block in Portsmouth, Ohio, she struck a pothole causing damage to her vehicle. Plaintiff seeks reimbursement for tire and rim replacement in the amount of \$801.66.

{¶ 2} On January 13, 2006, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} "The location of plaintiff's incident falls within the project limits of Project 615-04 with Boone Coleman Construction. The first day of work on the project by the contractor was March 14, 2005, but the only work being performed was assistance with utility relocation behind the sidewalk and demolition of houses. No work within the roadway and no lane restrictions were imposed by the contractor until April 19, 2005. At that time, traffic control was set up by the contractor from 25th Street south. (See Exhibit A) On the day of plaintiff's incident, Boone Coleman Construction was working on a waterline at 21st Street. (See Exhibit B and plan page)

On either of these dates, the contractor was not working where plaintiff hit her pothole.

{¶ 4} "Before the contractor started working on the project, maintenance of potholes was the responsibility of the City of Portsmouth. The Scioto County Manager, Troy Huff, contacted the Project Engineer and Area Engineer on March 30, 2005, because he noticed potholes within this project and he was told that the roadway maintenance was the responsibility of the City of Portsmouth."

{¶ 5} Plaintiff has not responded to defendant's motion to dismiss. The site of plaintiff's incident was within the city limits of Portsmouth.

{¶ 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 of defendant. 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:

Melissa Graham
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Plaintiff, Pro se

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2/21
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