

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

LATISHA ANN FIGG

Plaintif

v.

OHIO DEPT. OF REHAB. AND
CORRECTIONS

Defendant

Case No. 2006-03079-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On September 25, 2006, plaintiff, LaTisha Ann Figg, an employee at defendant's Pickaway Correctional Institution ("PCI"), parked her 2000 Chevrolet Impala at the PCI main entrance parking lot and went to work. During the time plaintiff was working her shift, an inmate under the supervision of PCI personnel was removing weeds near the main entrance parking lot. The inmate, using a powered string trimmer, propelled rocks into the path of plaintiff's parked vehicle. Plaintiff related the propelled rocks struck her car breaking the vehicle's right rear window and chipping paint from the vehicle's hood and right sides. Consequently, plaintiff filed this complaint seeking to recover \$170.00, the cost of a replacement window, plus \$1,295.66 for repairing paint chip damage. Plaintiff contended defendant should bear liability for all damage to her car caused by an inmate working under the supervision of PCI staff. The filing fee was paid. The inmate worker acknowledged he "was weed eating parking lot when rocks flew up and shattered window rear passenger and chipped paint on (plaintiff's) vehicle."

{¶ 2} Defendant admitted liability for the replacement of plaintiff's car window, but disputed plaintiff's claim for paint damage repair. Defendant, relying on information in a repair estimate (dated October 26, 2005) submitted by plaintiff, contested liability for the

vehicle damage evidenced by the repair estimate since the estimate listed “the need for replacement parts and a complete paint job” for plaintiff’s car. Defendant argued the damage to plaintiff’s car caused by the inmate worker was not so severe as to warrant replacement car parts and a complete repainting of the vehicle.

{¶ 3} Defendant submitted photographs of plaintiff’s car taken in May 2006, depicting damage to the right side doors of the vehicle. After examining plaintiff’s car defendant does not believe the damage displayed, identified as scratches, were caused by rocks flying from a string trimmer. Defendant’s observation that similar scratches appear on both sides of the car (no photos of the left side of plaintiff’s car were submitted) lead defendant to contest plaintiff’s claim regarding paint chip damage. The trier of fact, after examining the photographs, finds the damage depicted is consistent with damage caused by flying stones propelled from a string trimmer.

{¶ 4} Plaintiff responded insisting the body damage to her automobile was caused by an inmate performing lawn maintenance activities on defendant’s grounds on September 25, 2005. Plaintiff stated photographs of the vehicle body damage were taken shortly after the incident, but these photographs have not surfaced. Plaintiff noted the original incident report regarding the event listed paint chip damage was observed on the vehicle. Plaintiff submitted three estimates for body repair for her car. Plaintiff pointed out these estimates reflect repair costs for damage caused by the inmate worker and do not include any other ancillary unconnected repair expenses inconsistent with the September 25, 2005, damage incident.

{¶ 5} On August 7, 2006, defendant filed a reply to plaintiff’s response. The reply, which in affect amends the investigation report, admits liability for the paint and bodywork to plaintiff’s vehicle in the amount of \$945.00.

CONCLUSIONS OF LAW

{¶ 6} Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff's property while performing lawn maintenance. In regard to the facts of this claim negligence on the part of defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶ 7} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61. The court does find plaintiff's assertions persuasive.

{¶ 8} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶ 9} The court finds defendant liable to plaintiff in the amount of \$1,465.66, 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.

[C



Ohio Dept. of Rehab. & Corr., 2006-Ohio-7291.]

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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 \$1,490.66, 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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Plaintiff, Pro se

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For Defendant

RDK/laa
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