

# 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](http://www.cco.state.oh.us)

---

BENSON SPYKE

Plaintiff

v.

OHIO DEPT. OF NATURAL  
RESOURCES

Defendant

Case No. 2006-05951-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On July 11, 2006, plaintiff, Benson Spyke, sustained property damage to his boat while docking the watercraft at Cleveland Lakefront State Park, a park under the operational control of defendant, Department of Natural Resources (“DNR”). Plaintiff explained his damage occurred when his boat struck, “nails sticking out of the side of the dock.” Plaintiff surmised the nails, “were from a previous rub rail no longer on the dock.” Plaintiff asserted the damage to his boat was proximately caused by negligence on the part of defendant in maintaining a hazardous condition at the park dock facility. Consequently, plaintiff filed this complaint seeking to recover \$1,306.00, the cost of boat repair resulting from the July 11, 2006, incident. The filing fee was paid.

{¶2} Defendant has denied liability for plaintiff’s damage based on the fact plaintiff was a recreational user of DNR premises at the time of the property damage occurrence. Defendant noted the boat docking facilities at Cleveland Lakefront State Park are open to the public free of charge and plaintiff paid no fee to dock his boat.

{¶3} Since this incident occurred at Cleveland Lakefront State Park defendant qualifies as the owner of the “premises” under R.C. 1533.18, et seq.

{¶4} “Premises” and “recreational user” are defined in R.C. 1533.18 as follows:

{¶5} “(A) ‘Premises’ means all privately-owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways, waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶6} “(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 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.”

{¶7} R.C. 1533.181(A) states:

{¶8} “(A) No owner, lessee, or occupant of premises:

{¶9} “(1) Owes any due to a recreational user to keep the premises safe for entry or use;

{¶10} “(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

Case No. 2006-05951-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

{¶11} “(3) Assumes responsibility for or incurs liability for any injury to person or property caused by an act of a recreational user.”

{¶12} The state owes no duty to recreational users of state parks, who pay no fee or consideration for admission, to keep the premises safe for entry or use. *Phillips v. Ohio Dept. of Natural Resources* (1985), 26 Ohio App. 3d 77. The recreational user statute applies under the facts of the present claim.

{¶13} Plaintiff is clearly a recreational user, having paid no fee to enter the premises. Owing no duty to plaintiff, defendant clearly has no liability under a negligence theory. Even if defendant’s conduct would be characterized as “affirmative creation of a hazard,” it still has immunity from liability under the recreational user statute. *Sanker v. Ohio Department of Natural Resources* (1982), 81-04478-AD; *Howard v. Ohio Dept. of Natural Resources* (2002), 2001-11146-AD; *Reidel v. Department of Natural Resources* (2002), 2005-06384-AD.

{¶14} There is no dispute that plaintiff’s property damage occurred on state-owned property while he was engaged in a recreational pursuit. Pursuant to R.C. 1533.18 and 1533.181, the court finds that defendant owed no duty of care to keep the premises safe for use by plaintiff, and, consequently, defendant is not liable for plaintiff’s injuries under a theory of negligence. See *Meiser v. Ohio Dept. of Natural Resources*, 2003-10392-AD, 2004-Ohio-2097; also *Masters v. Ohio Dept. of Natural Resources*, 2005-09189-AD, 2005-Ohio-7100. Therefore, plaintiff’s claim is barred by R.C. 1533.181. Accordingly, judgment shall be rendered in favor of defendant.

# 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](http://www.cco.state.oh.us)

---

BENSON SPYKE

Case No. 2006-05951-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

OHIO DEPT. OF NATURAL  
RESOURCES

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant

---

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 defendant. Court costs are assessed against plaintiff. 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:

Benson Spyke  
5430 Kilbourne Drive  
Lyndhurst, Ohio 44124

Charles G. Rowan  
Acting Chief Counsel  
Department of Natural Resources  
2045 Morse Road, D-3  
Columbus, Ohio 43229-6693

RDK/laa  
1/11  
Filed 2/8/07  
Sent to S.C. reporter 3/20/07