

[Cite as *Harris v. Northeast Pre-Release Center*, 2007-Ohio-3049.]

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

GINA S. HARRIS

Plaintiff

v.

NORTHEAST PRE-RELEASE CENTER

Defendant

Case No. 2006-06256-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} On July 29, 2006, plaintiff, Gina S. Harris, an employee of defendant, North-East Pre-Release Center (“NEPRC”), suffered property damage to her truck, a 1994 Toyota, while entering defendant’s institution through the sallyport entrance. Plaintiff stated in her complaint that she, “was sitting at the front gate waiting to enter the (institution) announced my name at the gate, started to proceed into the institution, then the sallyport gate started to close and hit left driver side [of] my (pickup) truck.” Plaintiff implied the damage to her vehicle was proximately caused by negligence on the part of defendant’s control room officer in prematurely closing the sallyport gate upon the moving Toyota truck. Plaintiff filed an incident report immediately after her property damage event. In this report, plaintiff noted, “[o]n the above date/time (7/29/06 05.55) I G. Harris was sitting at the gate announced my name, then started to proceed into the institution, then the sallyport gate started to close and hit left side [of] my truck.” Plaintiff filed this complaint seeking to recover \$1,043.38, the cost of vehicle repair resulting from defendant’s gate striking her truck. The filing fee was paid.

{¶2} Defendant denied plaintiff’s damage was caused by any negligence on the part of NEPRC personnel or any malfunctioning gate under the control of NEPRC employees. Defendant contended the cause of plaintiff’s property damage was her own failure to follow proper procedure upon entering the institution grounds in a vehicle. Defendant reported NEPRC employee, Samuel Smith, was working as the control room officer at the institution’s vehicle entrance on the morning of July 29, 2006. Defendant explained NEPRC employee, Officer J. Taylor, drove his vehicle to the institution’s vehicle entry gate at approximately 5:56 a.m. on July 29, 2006, and verbally identified himself to the control room officer, Smith. Smith, responding to this identification, opened the sallyport gate from the control room. Defendant estimated the sallyport gate is located approximately 75 feet away from the front of the control room. The sallyport gate which opens into the institution’s interior parking lot is clearly visible from the control room. Defendant recorded that after Taylor drove through the sallyport gate entrance and into the interior parking lot, Smith activated the mechanism to close the gate. Defendant related, as the gate was closing after Taylor entered the parking lot, plaintiff identified herself over the control room intercom and drove forward until her vehicle was struck by the closing gate. Defendant contended Smith activated the gate stopping mechanism immediately

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upon hearing plaintiff over the intercom, but the gate still struck plaintiff's vehicle. Defendant asserted plaintiff did not follow proper procedure when she tried to drive from the control room area to the interior parking lot. Defendant stated procedure mandates an employee, "should wait for verbal permission prior to entering through the gate." Defendant maintained plaintiff own improper act was the proximate cause of her property damage.

{¶13} Defendant submitted a written statement from Officer Samuel Smith regarding the incident forming the basis of this claim. Smith stated he was working at the NEPRC control room on July 29, 2006, at about 5:56 a.m. when he identified Officer J. Taylor to enter the staff parking lot. Apparently Smith opened the sallyport gate to allow Taylor to pass through into the staff parking lot. According to Smith as he began to close the gate after Taylor passed, he "then heard G. Harris say her name." Smith, upon hearing plaintiff identify herself, noted he, "then looked out control (room) window and observed the gate close onto G. Harris truck." After he saw the gate contact with plaintiff's truck, Smith recalled he stopped the gate and reopened it to allow plaintiff to drive into the staff parking lot. Smith related plaintiff's, "truck did not have lights on while entering."

{¶14} Defendant submitted a copy of procedures to be followed for all vehicles entering the grounds of NEPRC. The stated policy provides:

{¶15} "A. Sally Port Post Security Identification

{¶16} "All movement of people, vehicles and goods into and out of an institution through any vehicular sallyport are subject to the same security requirements as entry through the main institution entrance. The Major shall include in the appropriate post orders procedures which insure that persons, vehicles and goods are properly identified and searched in accordance with current security policies.

{¶17} "Control Room Post Orders

{¶18} "2. Entry Control - The Control Center monitors and controls exit/entry of the Institution and "A" building.

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{¶19} “3. Firearms, weapons, cameras, personal cell phones and recording devices are not permitted.

{¶10} “7. Persons entering must be identified by:

{¶11} “a. Identified physically

{¶12} “b. Intercom.”

{¶13} Defendant asserted plaintiff should have waited for permission to enter before attempting to drive through the gated entrance to the staff parking lot. Defendant contended plaintiff was negligent in failing to receive clearance from security before attempting to drive into the staff parking lot with an activated gate closing upon her vehicle.

{¶14} On March 30, 2007, plaintiff filed a response to defendant’s investigation report. Plaintiff contends Smith should have seen her vehicle at the gate but must have been “half asleep” for this incident to occur. She asserts defendant should be liable for her damages.

CONCLUSIONS OF LAW

{¶15} 1) The traffic gate and mechanism which governs it is under the exclusive control of defendant. Thus, defendant will be liable for any malfunction which causes damage. *Han v. Traffic Department, Ohio State University* (1981), 1981-04575-AD.

{¶16} 2) However, plaintiff has the burden of proving, by a preponderance of the evidence, that the particular traffic gate malfunctioned during normal and intended use. *Saunders v. The Ohio State University* (1993), 93-05245-AD. To make such a showing, plaintiff must produce sufficient evidence or documentation to satisfy the trier of fact. *Id.*

{¶17} 3) If plaintiff produces sufficient evidence which furnishes a basis for only a guess, among different possibilities, the claim is insufficient. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82. Rather, plaintiff must establish a reasonable basis for sustaining all essential issues in the claim. *Id.*

{¶18} 4) Plaintiff has failed to prove her truck was damaged by a malfunctioning traffic gate arm under the control of defendant. See *Quaiser v. Cleveland State University*

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(1999), 99-02035-AD; *Watson v. University of Toledo* (2001), 2001-02635-AD.

{¶19} 5) Evidence tends to establish plaintiff's own negligence in not displaying her vehicle headlights for better identification and in not waiting for permission to enter the area, essentially making a rushing maneuver not allowing for safe entrance, were the greater causes of her property damage. See *Reese v. Cleveland State Univ.*, 2004-10493-AD, 2005-Ohio-3248. Consequently, plaintiff's claim is denied.

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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:

Gina S. Harris
2719 Rita Drive
Lorain, Ohio 44053

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

RDK/laa
4/4
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