

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

CARA R. CLEMENS

Case No. 2007-04982-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

ENTRY OF DISMISSAL

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

{¶1} On May 8, 2007, plaintiff, Cara R. Clemens, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on March 7, 2007, at approximately 2:30 p.m., she was traveling westbound on Woodland Avenue (OH-87) when she struck a large pothole near East 38th Street. As the result of striking the pothole she sustained damage to her vehicle. Plaintiff seeks damages in the amount of \$315.50 for a replacement wheel, wheel alignment and other costs associated with the damage sustained which she asserts was caused by the defendant's negligence in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

{¶2} On June 1, 2007, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶3} "Defendant has performed an investigation of this site and Woodland Avenue (SR 87) and East 38th Street, fall under the maintenance jurisdiction of the City of Cleveland (See Attached Map and Maintenance Agreement). This location is close to the Cuyahoga County Community College Campus. As such, this section of roadway is not within the maintenance jurisdiction of the defendant.

{¶4} "In sum, the City of Cleveland is responsible for the maintenance of the roadway upon which plaintiff's incident occurred. As such, the City of Cleveland is the proper party to plaintiff's claim, not the defendant."

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{¶15} Plaintiff has not responded to defendant's motion to dismiss. The site of plaintiff's incident was in the City of Cleveland.

{¶16} R.C. 5501.31 in pertinent part states:

{¶17} "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."

{¶18} The site of the damage-causing incident was not the maintenance responsibility of defendant. Consequently, plaintiff's case is DISMISSED.

{¶19} 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
7/10
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