

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

DIANA L. THEAKER

Case No. 2006-04733-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

PORTAGE LAKES STATE PARK

Defendant

{¶1} On June 14, 2006, plaintiff, Diana L. Theaker, parked her automobile at a parking space at the Big Oaks Picnic Area located on the grounds of defendant, Portage Lakes State Park. Portage Lakes State Park is under the control of the Department of Natural Resources. The end of the parking space plaintiff drove her car into was marked by a concrete block anchored by metal rebar spikes. When plaintiff backed her automobile from the parking space the automobile bumper caught on a piece of metal rebar protruding from the concrete parking block. The protruding rebar ripped the bumper of plaintiff's vehicle causing substantial damage. Plaintiff contended her vehicle was damaged as a proximate cause of negligence on the part of defendant in maintaining a defective condition at the parking spot around the Big Oaks Picnic Area on the grounds of Portage Lakes State Park. Consequently, plaintiff filed this complaint seeking to recover \$624.48, her cost of automotive repair and related expenses resulting from the June 14, 2006, incident. The filing fee was paid.

{¶2} Defendant has denied liability for the damage claim based on the fact plaintiff was a recreational user of defendant's premises at the time of the property damage occurrence. Defendant explained the parking area plaintiff chose is open to the public free of charge and plaintiff did not pay a fee to use the facilities.

{¶3} Since this incident occurred at Portage Lakes State Park, defendant qualifies as the owner of the "premises" under R.C. 1533.18, et seq.

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{¶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 and 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 the 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 states:

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

{¶9} “(1) Owes any duty 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.” (Emphasis added.)

{¶11} Pursuant to the enactment of R.C. 2743.02(A), the definition of premises in R.C. 1533.18(A) effectively encompassed state-owned lands. *Moss v. Department of Natural Resources* (1980), 62 Ohio St. 2d 138. R.C. 1533.18(A)(1), which provides, inter alia, that an owner of premises owes no duty to a recreational user to keep the premises safe for entry or use, applies to the state. *Fetherolf v. State* (1982), 7 Ohio App. 3d 110. 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. See *Shockey v. Ohio Dept. of Natural Resources*, 2004-09509-AD, 2005-Ohio-641. Even if defendant’s conduct would be characterized as “affirmative creation of hazard,” it still has immunity from liability under the recreational user statute. *Sanker v. Department of Natural*

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Resources (1982), 81-04478-AD.

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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 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:

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RDK/laa
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