

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

RITA J. ALVARADO

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-09775-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On September 8, 2008, a 2007 Honda Civic owned by plaintiff, Rita J. Alvarado, was damaged while parked at the east parking lot on the premises of defendant's Southern Ohio Correctional Facility ("SOCF"). Specifically the left front side window of plaintiff's vehicle was broken by rocks propelled from a lawn mower operated by an inmate under the supervision of SOCF personnel. Plaintiff asserted plaintiff should bear liability for the cost of replacing her broken car window and she has consequently filed this complaint seeking to recover \$323.70, the cost of a replacement window. The filing fee was paid. In her complaint plaintiff acknowledged she maintains insurance coverage with a \$100.00 deductible provision to cover the cost of vehicle repair. Plaintiff denied receiving any payment from her insurer.

{¶ 2} 2) Defendant admitted liability for breaking plaintiff's car window, but disputed the claimed damages of \$323.70. Defendant contended the provisions of R.C. 2743.02(D) limit plaintiff's damages to \$100.00. R.C. 2743.02(D) provides in pertinent part: "Recoveries against the state shall be reduced by the aggregate of insurance

proceeds, disability award, or other collateral recovery received by the claimant.” Defendant stated, “plaintiff’s documentation shows that her insurer, Auto-Owners Insurance Company, will pay \$223.70 of the total \$323.70 damage claim.” Defendant reasoned plaintiff’s damages should be reduced by the amount of her insurance proceeds available despite the fact that no evidence has been presented to establish any insurance money was actually received by plaintiff.

{¶ 3} 3) Plaintiff filed a response noting “I accept the findings of the court.”

CONCLUSIONS OF LAW

{¶ 4} 1) Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff’s property while performing lawn maintenance. In regards to the facts of this claim negligence on the part of defendant has been shown. *Figg v. Ohio Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2006-03079, 2006-Ohio-7291.

{¶ 5} 2) R.C. 2743.02(D) states:

{¶ 6} “(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.”

{¶ 7} Under the circumstances presented in the instant claim, taking into consideration the party defendant, the court concludes in order for R.C. 2743.02(D) to have any application, insurance proceeds must have actually been received. Plaintiff specifically denied she received any payment from her insurer to pay for the cost of replacing her car window. Since no evidence has been presented to show plaintiff received funds from a collateral source, the limitations of R.C. 2743.02(D) do not apply.

{¶ 8} 3) 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, 577 N.E. 2d 160.

{¶ 9} 4) The court finds defendant liable to plaintiff in the amount of \$323.70, plus the \$25.00 filing fee, which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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

RITA J. ALVARADO

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-09775-AD

Deputy Clerk Daniel R. Borchert

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 \$348.70, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Rita J. Alvarado
1311 McConnell Avenue
Portsmouth, Ohio 45662

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
11/6
Filed 12/3/09
Sent to S.C. reporter 2/25/09