

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

THOMAS G. KRESS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-09562-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On September 9, 2008, plaintiff, Thomas G. Kress, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on July 16, 2008, at approximately 2:00 p.m., he struck a stone “about 8” in diameter from the right lane of Highway 65 near exit 199B,” with his 2005 Jaguar S. As a result of striking the stone plaintiff sustained damage and repair costs to his vehicle in the amount of \$486.47. Plaintiff attributes his damages to the failure of defendant to maintain the roadway free of debris. Plaintiff submitted the filing fee with the complaint and also seeks reimbursement of that amount.

{¶ 2} 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 SR 65 or Miami Street at Exit 199 falls under the maintenance jurisdiction of the City of Toledo. (See Attached Map) As such, this section of roadway is not within the maintenance jurisdiction of the defendant.”

{¶ 4} Plaintiff has not responded to defendant's motion to dismiss. The site of the damage-causing incident was located in the City of Toledo.

{¶ 5} Ohio Revised Code 5501.31 in pertinent part states:

{¶ 6} "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 culverts thereon, shall attach to or rest upon the director, but the director may construct, reconstruct, widen, resurface, maintain, and repair the same with or without the cooperation of any municipal corporation, or with or without the cooperation of boards of county commissioners upon each municipal corporation consenting thereto."

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

{¶ 8} 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:

Thomas G. Kress
131 Harbor Point Road
Rossford, Ohio 43460

Thomas P. Pannett
Department of Transportation
1980 West Broad Street

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ENTRY

Columbus, Ohio 43223

DRB/laa
12/9
Filed 12/16/08
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