

# 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

RUDY A. TOUVELL, SR.

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2008-09449-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶ 1} On July 22, 2008, plaintiff, Rudy A. Touvell, Sr., parked his 2005 Honda Odyssey at a parking lot located on the grounds of Cedar Falls State Park. Cedar Falls State Park is a state owned facility under the control of defendant, Ohio Department of Natural Resources (“ODNR”). The end of the parking space plaintiff drove his vehicle into was marked by a concrete block anchored by metal rebar spikes. When plaintiff backed his Honda Odyssey from the parking space, the vehicle’s bumper caught on a piece of metal rebar protruding 1 1/4" from the top of the concrete parking block. The protruding rebar ripped the bumper of plaintiff’s vehicle causing substantial damage. Plaintiff contended his vehicle was damaged as a proximate cause of negligence on the part of defendant in maintaining a defective condition at the parking spot on the grounds of Cedar Falls State Park. Consequently, plaintiff filed this complaint seeking to recover \$889.03, his cost of automotive repair and related expenses resulting from the July 22, 2008 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 Cedar Falls State Park, defendant qualifies as the owner of the “premises” under R.C. 1533.18, et seq.

{¶ 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 four-wheel drive motor vehicle, or to 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, 16 O.O. 3d 161, 404 N.E. 2d 742. 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, 7 OBR 142, 454 N.E. 2d 564. 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 Resources* (1982), 81-04478-AD; *Theaker v. Portage Lakes State Park*, Ct. of Cl. No. 2006-04733-AD, 2007-Ohio-648.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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