

# 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

DARIN PLUMMER

Plaintiff

v.

OHIO DEPARTMENT OF PUBLIC SAFETY

Defendant

Case No. 2013-00508-AD

Interim Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} Plaintiff, Darin Plummer, filed a complaint against defendant, Ohio Department of Public Safety, seeking reimbursement for towing and storage fees related to the state vehicle assigned to him. He stated: “On September 21, 2012, Shamrock Towing towed the state-owned car assigned to Plaintiff. Plaintiff was on disability leave and out of town when the car was towed. Upon his return, Plaintiff retrieved the car and paid the towing and storage fees. The invoice states that the vehicle was towed for expired tags.”

{¶2} Plaintiff filed for reimbursement of these fees on May 14, 2013 and May 15, 2013, both requests were denied by defendant. Therefore, plaintiff seeks reimbursement of \$347.61, the total fees for towing and storage. Plaintiff submitted the \$25.00 filing fee with the complaint.

{¶3} Defendant filed an investigation report denying liability for the towing and storage fees because it “ensured that Plaintiff’s vehicle was properly registered and obtained new vehicle registration stickers for the vehicle in accordance with the provisions of Chapter 4503 of the Ohio Revised Code (R.C.) and Defendant’s vehicle

registration procedures.” Defendant admitted that plaintiff was entitled to use the state-owned vehicle as part of his job responsibilities

{¶4} Defendant contended that “[a]ccording to records from the Ohio Bureau of Motor Vehicles (BMV), the registration on Plaintiff’s vehicle was set to expire on July 31, 2013<sup>1</sup> .” The defendant further asserted that it renewed the vehicle’s registration prior to the date of expiration. “Therefore, while the vehicle registration tags on Plaintiff’s state vehicle were expired, the vehicle was properly registered in accordance with the state law and Defendant’s internal procedures on the date that it was towed.”

{¶5} According to defendant, the BMV sent new vehicle registrations stickers to the defendant’s Fleet Management section. “On June 19, 2012, Ohio Investigative Unit (“OIU”) management sent an email to each OIU district informing them that their vehicle registration stickers were available. Exhibit B. On July 3, 2012, Agent Williams from the Columbus district office signed for and received the vehicle registration stickers for the vehicles assigned to agents in the Columbus District Office, including the Plaintiff’s vehicle. Exhibit B. The stickers were then placed in each individual’s office mailbox. Plaintiff’s vehicle registration stickers were sitting in Plaintiff’s mailbox when he returned to work. Exhibit C at page 6. Plaintiff never attempted to make arrangements to pick up the vehicle registration stickers or have his vehicle registration stickers delivered to him. The state fulfilled its legal obligation of registering Plaintiff’s vehicle, obtaining new vehicle registration stickers, and making reasonable efforts to ensure that Plaintiff received the stickers to place on his vehicle.”

{¶6} Defendant cites to DAS Directive No. GS-D-02 and DPS policy 203.1, which “provide that the driver of a state vehicle shall be responsible for parking infractions.” Defendant admits that these policies do not directly address towing fees. However, defendant argues that the “underlying principle is that the employee is responsible for the employee’s parking violations.”

{¶7} Defendant’s Administrative Investigation uncovered the fact that the apartment complex that this vehicle was parked in “places notices on vehicles to give vehicle owners 48 to 72 hour[s] notice that the vehicle will be towed if not moved.” Defendant argued, “[b]ecause Plaintiff had the vehicle parked where Plaintiff normally

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<sup>1</sup> Based on the evidence presented, the court assumes that this date is a typographical error, and the defendant actually meant that the registration was set to expire on July 31, 2012. The court takes note of the fact that the defendant purposely excluded a copy of the registration to protect the identity of plaintiff, an undercover enforcement agent.

parks it, Plaintiff was in a better position than Defendant to see these notices. Plaintiff was on vacation when these notices were placed on his vehicle, and did not get them until he picked the vehicle up from the towing company.”

{¶8} Defendant asserted that plaintiff had “the option of parking his state issued vehicle at a patrol post or his district office while on extended leave or vacation . . . Plaintiff’s vehicle was not towed because of the Defendant’s error. Plaintiff’s vehicle was towed because Plaintiff failed to pick up or arrange for delivery of his stickers and . . . Plaintiff failed to park his vehicle in area where it would be safe from parking infractions and is responsible for the towing fees pursuant to state and department policy.”

{¶9} Plaintiff submitted a response to defendant’s investigation report asserting that defendant failed to inform him that the registration of his assigned vehicle was going to expire and failed to communicate the fact that the stickers were available for pickup at the local office. Plaintiff argued, contrary to defendant’s assertion, the vehicle was not “properly registered,” as law requires the registration sticker “be placed on the vehicle which is clearly the responsibility of the owner (State of Ohio) not the driver (Plaintiff Darin Plummer).” Further, “[p]laintiff was also under medical order cautioning the driving of vehicle and forbidden by the Ohio Department of Public Safety policy from working or driving the vehicle while on disability.” Further, plaintiff asserted that leaving his vehicle at a patrol post or district office was not an option for his choosing, but rather a decision left to the discretion of a supervisor. Plaintiff reiterated that it is the owner’s responsibility to place the stickers on the vehicle and not the driver’s and further that his employer was aware that he was parking his vehicle at his apartment complex. Therefore, it could have placed the sticker on the vehicle in his absence. Plaintiff disagreed with defendant’s interpretation of the vehicle policy as it pertains to responsibility for parking infractions. He stated: “The policy does provide that the driver of a state vehicle shall be responsible for parking infractions, but how does the ‘underlying principle’ apply to a towed vehicle not under the control of the driver? Parking infractions and also driving infractions are the responsibility of the driver of the state vehicle because they are penalties incurred for wrongdoing. A towing expense is a fee for services rendered, not a penalty.” Plaintiff agreed with the defendant that there is no policy which refers to responsibilities for towing a state vehicle.

#### CONCLUSIONS OF LAW

{¶10} Plaintiff has the burden of proving, by a preponderance of the evidence, that

he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University*, 76-0368-AD (1977).

{¶11} Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶12} The court finds that plaintiff has met his burden by demonstrating that the loss he suffered, towing and storage fees, was proximately caused by defendant's negligence and produced sufficient evidence to prove that more likely than not it was defendant's conduct which caused his loss. The court finds persuasive plaintiff's argument that he was on disability leave and, therefore, unable to make arrangements to pick up the stickers. The defendant has offered no evidence that it made any attempt to contact the plaintiff informing him that his registration tags were available for pick up. The only mention of communication is the email sent on June 19, 2012 to "each OIU district informing them that their vehicle registration stickers were available." The court assumes, based on defendant's explanation, that this email was not sent directly to the plaintiff. Rather, it was sent to supervisors, namely Agent Williams. Even if an email were sent to plaintiff's work-email this would not be, as the defendant put it, "reasonable efforts to ensure plaintiff received the stickers to place on his vehicle." The plaintiff could not reasonably be expected to check his email while on disability leave. Based on all of the evidence presented, it seems clear that defendant was aware that plaintiff was on leave, and that he was out-of-town. The defendant's own disability policy bars plaintiff from performing any work related activities until he is released by the doctor and his return is approved by the defendant. The court finds it is not persuaded that the defendant would expect the plaintiff to violate its own policy in order to perform a work-related activity while on an approved disability leave. The defendant assumed the responsibility of registering the plaintiff's vehicle, and the court does not agree that the vehicle was "properly registered" at the time it was towed. This is inconsistent with the facts, as the reason the vehicle was towed was the fact that it was not properly registered since the stickers were not displayed.

{¶13} Accordingly, judgment is rendered in favor of plaintiff in the amount of \$347.61, 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*

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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 plaintiff in the amount of \$372.61, which includes the filing fee. Court costs are assessed against defendant.

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DANIEL R. BORCHERT

Interim Clerk

Entry cc:

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