

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

HERB JONES

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2013-00614-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Herb Jones, filed this action against defendant, Ohio Department of Natural Resources (“ODNR”), contending that on August 24, 2013, while boating on Delaware Lake, he stopped at the marina and filled his boat with fuel. Approximately five minutes after filling up, his boat “started stalling and eventually died. We were towed back to the docks and our boat was picked up by Paul’s Marine, where we purchased it, to be repaired. It was determined that the gas in our tank was approximately 90% water.” Plaintiff asserted that, earlier that day, around 12:15pm, he was informed by an employee of the marina that “the pumps were now re-opened and ready for use. They had been closed since the lake was flooded and closed.”

{¶2} Plaintiff requested damages in the amount of \$452.58 for the repairs to his boat, towing, and reimbursement for 23.016 gallons of fuel purchased from defendant. Plaintiff implied the damage to his vessel was caused by the negligence of the defendant. Plaintiff submitted the \$25.00 filing fee with the complaint.

{¶3} Defendant filed an investigation report and while acknowledging that the fuel supply tanks at the Marina were flooded with water, submitted evidence contradicting

the plaintiff's account of the story. Namely, "evidence establishing that its fuel supply tanks were fully serviced: drained, vacuumed out of all water, cleaned, and tested for contamination after fuel delivery." Defendant contends that this servicing was performed on August 23, 2013, the day before plaintiff's incident and produced a letter from the service vendor purportedly confirming the date of service as August 23, 2013.

{¶4} Plaintiff did not file a response to defendant's investigation report.

CONCLUSIONS OF LAW

{¶5} In order for plaintiff to prevail on his claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St. 3d 75, 77, 472 N.E.2d 707 (1984).

{¶6} Plaintiff was on defendant's premises for purposes that would classify him as an invitee, defined as a person who comes "upon the premises of another, by invitation, express or implied, for some purpose which is beneficial to the owner." *Baldauf v. Kent State Univ.*, 49 Ohio App. 3d 46, 47, 550 N.E.2d 517 (10th Dist. 1988). An owner or occupier of premises owes its invitees "a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers." *Armstrong*, at ¶5.

{¶7} An owner or occupier of premises owes a business invitee a duty of ordinary care to maintain the premises in a reasonably safe condition so that its customers are not unnecessarily and unreasonably exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St. 3d 203, 480 N.E.2d 474 (1985). Ordinary care connotes that which an ordinarily reasonable and prudent person exercises. *Parson v. Lawson Co.*, 57 Ohio App. 3d 49, 50, 566 N.E.2d 698 (5th Dist. 1989). "An owner is not, however, an insurer of the customer's safety." *Blain v. Cigna Corp.*, 10th Dist. No. 02AP-1442, 2003-Ohio-4022, ¶7.

{¶8} "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in light of all the attending circumstances, the injury is then the proximate result of negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.*, 6 Ohio St. 3d 155, 160, 451 N.E.2d

815 (1983), quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.*, 122 Ohio St. 302, 309, 171 N.E. 327 (1930). Here, defendant admits that its fuel pumps were flooded, and apparently required servicing before continuing use. It is certainly foreseeable that fuel contaminated with water could cause property damage to patrons boats.

{¶9} The ultimate question in this case involves the credibility of the information presented by the parties. The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E. 2d 548 (1964). The defendant maintained that the plaintiff has failed to provide any evidence "that gasoline from the state park marina was the sole, proximate cause of the damage . . . [however] [p]laintiff could have acquired the contaminated gas at another location or the contamination may not have occurred during fueling." The trier of fact finds these assertions lack plausibility and therefore finds the plaintiffs recollection of the incident persuasive. *McTear v. Ohio Dept. of Transp., Dist. 12, Ct. of Cl. No. 2008-09139-AD, 2008-Ohio-7118*. First, plaintiff has provided a receipt for the purchase of the fuel from the defendant. The court finds it unreasonable to believe that the plaintiff went to another location to purchase tainted fuel in order to reinforce his claim. Further, it does not seem probable, considering all of the facts and circumstances, that the fuel would become contaminated at a time other than fueling. The plaintiff asserted that his boat stalled shortly after fueling at the marina, and he had been traveling around the lake for approximately 2.5 to 3 hours prior to filling up at the marina with no problems. Lastly, if the water in the fuel tank was attributable to some defect or malfunction in the plaintiff's boat, that defect would likely be noted in the receipt for repairs. Defendant is liable to plaintiff for the damage claimed, \$452.58, 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*, 62 Ohio Misc. 2d 19, 587 N.E.2d 990 (Ct. of Cl. No. 1990).

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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 \$477.58, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Interim Clerk

Entry cc:

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DM/laa
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