

# 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

MELISSA CANTU

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2013-00386-AD

Interim Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} Plaintiff, Melissa Cantu, filed this claim against defendant, Department of Natural Resources (“ODNR”), seeking \$966.88 for reimbursement of medical expenses her daughter incurred as the result of an incident which occurred at defendant’s Findlay State Park. Plaintiff related her daughter sustained personal injuries in the following manner: we rented canoes and “[c]ame to an area where several park visitors were swinging from rope attached to tree limb, jumping into lake. Brianna [plaintiff’s daughter] attempted, but landed in a very shallow area. Hit her back on rocks . . . [and] fractured her spine.”

{¶2} Plaintiff contended her daughter’s personal injuries were sustained as the result of negligence on the part of ODNR by negligently maintaining its property on the premises of Caesar State Park. Plaintiff submitted the \$25.00 filing fee.

{¶3} Defendant denied liability for plaintiff’s daughter’s personal injuries based on the fact that her daughter was a recreational user of Findlay State Park at the time of the personal injury occurrence. Defendant observes, “[t]here is no entrance fee or

admittance fee required to utilize the overall benefits of Findlay State Park, which is held open to the public for recreational use free of charge.” Defendant contends the Department of Natural Resources is immune from liability to a plaintiff who is a recreational user of the state park premises. See *Sorrell v. Ohio Department of Natural Resources*, 40 Ohio St. 3d 141, 532 N.E.2d 72 (1988); *Phillips v. Ohio Department of Natural Resources*, 26 Ohio App. 3d 77, 498 N.E.2d 230 (10<sup>th</sup> Dist. 1985); *Bregant v. Portage Lakes State Park*, 2000-11894-AD (2000).

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

#### CONCLUSIONS OF LAW

{¶5} Since this incident occurred at Findlay State Park, defendant qualifies as the owner of the “premises” under R.C. 1533.18, et seq.

{¶6} “Premises” and “recreational user” are defined in R.C. 1533.18 as follows:

{¶7} “(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.

{¶8} “(B) ‘Recreational user’ means a person to whom permission has been granted, without 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 premises to hunt, fish, trap, camp, hike, swim, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle, or to engage in other recreational pursuits.”

{¶9} R.C. 1533.181(A) states:

{¶10} “(A) No owner, lessee, or occupant of premises:

{¶11} “(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶12} “(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

{¶13} “(3) Assumes responsibility for or incurs liability for any injury to person or property caused by an act of recreational user.”

{¶14} 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*, 62 Ohio St. 2d 138, 404 N.E.2d 742 (1980). R.C. 1533.181(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*, 7 Ohio App. 3d 100, 454 N.E.2d 564 (10<sup>th</sup> Dist. 1982). Plaintiff is clearly a recreational user, having paid no fee to enter the premises. The fee she paid to rent canoes is insufficient to elevate her status to something other than a recreational user. Payment of a fee for a particular service, such as to rent a cabin or picnic shelter at a park, does not equate to an entrance fee where such rental is not required to enjoy the overall benefits of the park. *Reed v. Miamisburg*, 96 Ohio App. 3d 268, 644 N.E.2d 1094 (2<sup>nd</sup> Dist. 1993); *Howell et al., v. Buck Creek State Park*, 144 Ohio App. 3d 227, 759 N.E.2d 892 (10<sup>th</sup> Dist. 2001). Owing no duty to plaintiff, defendant clearly has no liability under a negligence theory. *Loudermilk v. Buckeye Lake State Park*, Ct. of Cl. No. 2003-10406-AD, 2004-Ohio-1344. See *Meiser v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2003-10392-AD, 2004-Ohio-2097; also *Masters v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2005-09189-AD, 2005-Ohio-7100; *Crozier v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2005-11621-AD, 2006-Ohio-7161. Therefore, plaintiff’s claim is barred by R.C. 1533.181. Accordingly, judgment shall be rendered in favor of defendant.

{¶15} Plaintiff contends that a Park Ranger informed her that he was aware of the rope swing claiming the officer stated, “Oh Yeah, I saw that last time I made rounds. I meant to take it down.” However, this alleged admission does not impute liability on the defendant. Even where a defendant’s conduct could be characterized as “affirmative

creation of hazard,” it still maintains immunity under the recreational user statute. *Sanker v. Department of Natural Resources*, 81-04478-AD (1982); *Touvell v. Ohio Department of Natural Resources*, Ct. of Cl. No. 2008-09449-AD, 2009-Ohio-4267.

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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  
Interim Clerk

Entry cc:

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DM/laa  
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