[Cite as *VanKirk v. Ohio Dept. of Transp.*, 2014-Ohio-5969.]

IN THE COURT OF CLAIMS OF OHIO

JAMES P. VANKIRK

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-00635-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On July 14, 2014 James VanKirk filed a complaint in this Court alleging that on October 16, 2013 employees of the Ohio Department of Transportation entered onto his property located at 8009 State Route 7 in the Village of Rogers, Columbiana County, Ohio and, without his permission, removed trees and shrubs with an estimated replacement of $2,734.88.

{¶2} In the Investigation Report filed September 29, 2014, the Defendant, Ohio Department of Transportation, admits that it did, without permission, mistakenly enter onto the property of James VanKirk and conduct mowing operations. However, ODOT denies removing trees at all, stating that what was mowed on the claimant's property was mostly brush. While admitting to some form of liability, ODOT also contends that the claimant's request for replacement value of his trees is not the proper measure of damages, but instead argues that the Court should measure damages by calculating the difference in market price of the claimant's property immediately before and after the removal occurred.

{¶3} Taken together it is clear from the pleadings submitted by both the parties that ODOT has liability for some damages that occurred as a result of the actions of the ODOT employees on October 16, 2013. The proper measure of damages, thus, is what is at issue and must be determined by the Court.

{¶4} The claimant has presented his argument for damages in a relatively straightforward manner. He has submitted an estimate from a landscaper in his community for the replacement of trees and shrubs that were removed by the Department in the amount of $2,734.88. This, he believes, is what he should be reimbursed.

{¶5} Conversely, ODOT puts forth the principle that the Department should only be responsible for the diminution in value of claimant's real property as a result of unlawful removal of claimant's trees and shrubs. The agency forthrightly admits that such a measure in this case, requiring before and after appraisals of claimant's property, would be difficult and cost prohibitive.

{¶6} However, no such complicated method of resolving this claim is necessary. By way of example, if a group of neighborhood youth playing baseball in the street broke a neighbor's window, all reasonable people would agree that the youth should pay to have neighbor's window replaced. No reasonable person would argue that the players would only be responsible for the diminution in value of the property as a result of their breaking a window. Similarly, in the case at hand, the Department stands in a parallel position to the errant ball players. Thus, it is reasonable that ODOT must make the claimant reasonably whole as a result of their actions. That can only be done by requiring the Department to pay for replacing the trees and shrubs that it mistakenly removed. Thus, the Court will find for the claimant in the amount requested.

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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 $2,759.88, which includes the filing fee. Court costs are assessed against defendant.

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MARK H. REED
Clerk

Entry cc:

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