

IN THE COURT OF CLAIMS OF OHIO

KELLI J. WOODWARD

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2014-00655-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On July 21, 2014, the Plaintiff, Kelli Woodward, filed a complaint in this Court against the Ohio Department of Natural Resources. The Plaintiff alleges that on June 27, 2014, an employee of the Ohio Department of Natural Resources (ODNR), who was cutting weeds with a powered weed trimmer, struck a rock and caused that rock to be propelled from the weed trimmer string, cracking the windshield of her 2011 Honda Odyssey, causing damages in the amount of \$722.93. The accident occurred when Plaintiff was driving her vehicle on the roadway near the archery range at Hocking Hills State Park in Hocking County, Ohio. It appears that the ODNR employee was engaged in maintaining the grounds near the roadway when his weed trimmer struck the rock.

{¶2} In its Investigation Report filed December 19, 2014, ODNR does not dispute the factual allegations of Plaintiff's complaint, but does deny liability for her damages. This position is based primarily on two principles. The first argument advanced by ODNR is that the Defendant owed no legal duty to this particular Plaintiff, as she was a recreational user of the park on the day her windshield was damaged. Secondly, ODNR contends that it has no liability for Plaintiff's damages as there is no evidence that the Defendant's employee was negligent while conducting the weed trimming operation.

{¶3} The Court does believe that current Ohio law, in this jurisdiction, would allow a finding that ODNR does in fact owe a legal duty to this Plaintiff. The Court is unable to distinguish between the status of the Plaintiff here and the Plaintiff in the very recent case of *Combs vs. Ohio Department of Natural Resources*, 2014-Ohio-4025, 2014 Ohio App. LEXIS 3931, 19 N.E.3d 596 (Ohio Ct. App., Franklin County 2014). In both cases, the two plaintiffs were using park property for a non-business purpose when their respective incidents occurred.

{¶4} Therefore in finding that the Defendant owed the Plaintiff a legal duty, the Court must then turn to the question of whether ODNR, through the action of its employee in trimming weeds and striking a rock, committed an act of negligence thereby making ODNR responsible for Plaintiff's loss.

{¶5} The Department contends that under present Ohio law, mowing operations conducted near a state highway can never be found to be a negligent act. In support of this position, ODNR cites *Gore v. Ohio ODOT*, 2003-Ohio-1648, 2003 Ohio App. LEXIS 1567. However, *Gore* involved the question of the extent of liability of a state agency for the alleged negligent action of an independent contractor. Here the alleged negligence was committed by an employee of the State agency. Thus, *Gore* has little applicability to this claim.

{¶6} The issue then in a nutshell is whether, without any further evidence, the Court must find that the ODNR employee, in merely trimming weeds with a powered weed trimmer, engaged in a negligent act. Note that this is all the evidence the Court has before it to determine this issue. There is no evidence that the employee was trimming weeds in an area where rocks were so visibly present and abundant that they should have been removed before the cutting began. There is no evidence that the weed trimmer was in any way defective or more likely than other similarly manufactured weed trimmers to propel rocks. Absent other facts such as these, or some other persuasive type of evidence to support Plaintiff's claim, the Court cannot find that an ODNR employee's act in simply cutting weeds with a powered weed trimmer near a

highway is a negligent act. And without a negligent act, ODNR cannot be held legally liable for the cost of repair of Plaintiff's windshield. Therefore, this claim must be dismissed.

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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 absorbed by the Court.

MARK H. REED
Clerk

Entry cc:

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