

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

DAVID GAISER

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2011-05751-AD

Acting Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, David Gaiser, filed this action against defendant, Department of Transportation (ODOT), alleging the tires on his vehicle were damaged as a proximate result of negligence on the part of ODOT in maintaining a hazardous condition on State Route 161. Plaintiff related he hit a pothole when he changed lanes while driving westbound on SR 161. Plaintiff recalled the described incident occurred on March 17, 2011, at approximately 8:00 p.m. In his complaint, plaintiff requested damages in the amount of \$438.84, the total cost of a replacement parts. The \$25.00 filing fee was paid.

{¶2} Defendant filed an investigation report requesting plaintiff's claim be dismissed due to the fact the City of Columbus and not ODOT bears the maintenance responsibility for the roadway where plaintiff's incident occurred. Consequently, defendant contended the City of Columbus is the proper party defendant to plaintiff's action.

{¶3} Plaintiff did not file a response.

CONCLUSIONS OF LAW

{¶4} R.C. 2743.01(A) provides:

{¶5} “(A) ‘State’ means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. ‘State’ does not include political subdivisions.”

{¶6} R.C. 2743.02(A)(1) states in pertinent part:

{¶7} “(A)(1) The state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G)(1) of section 9.60 and division (B) of section 3737.221 of the Revised Code and subject to division (H) of this section, and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) or (3) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.”

{¶8} R.C. 5501.31 in pertinent part states:

{¶9} “Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.49 of the Revised Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director . . .”

{¶10} The site of the damage-causing incident was not the maintenance jurisdiction of defendant. Consequently, plaintiff’s case is dismissed.

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

DAVID GAISER

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2011-05751-AD

Acting Clerk Daniel R. Borchert

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, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Acting Clerk

Entry cc:

David Gaiser
7139 Addington Road
New Albany, Ohio 43054

Jerry Wray, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

8/3
Filed 8/10/11
Sent to S.C. reporter 1/3/12