

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

AMY L. HILL

Plaintiff

v.

BEAVER CREEK STATE PARK

Defendant

Case No. 2007-09089-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On September 9, 2007, plaintiff, Amy Hill, parked her 1989 Ford Festiva, “at the dead end turnaround at picnic area #1” on the grounds of defendant, Beaver Creek State Park. Plaintiff recalled that as she was walking around the park grounds, a tree limb fell upon her parked automobile, “which crushed the car’s roof, bent the driver’s side door frame and shattered the driver’s side door’s glass window.” Plaintiff related the car was “totalled” as a result of being struck by the falling limb from a nearby tree. Plaintiff implied the damage to her car was proximately caused by negligence on the part of defendant in maintaining a hazardous condition on park premises. Consequently, plaintiff filed this complaint seeking damages of \$500.00, the amount of her insurance coverage deductible. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that cost along with her damage claim.

{¶ 2} Defendant denies liability for plaintiff’s damage based on the fact plaintiff was a recreational user of Beaver Creek State Park premises at the time of the property damage occurrence. Defendant observes the premises at Beaver Creek State Park are open to the public free of charge and plaintiff paid no fee to use the benefits associated

with the park. 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* (1988), 40 Ohio St. 3d 141, 532 N.E. 2d 72; *Phillips v. Ohio Department of Natural Resources* (CA Franklin 1985), 26 Ohio App. 3d 77, 26 OBR 252, 498 N.E. 2d 230; *Bregant v. Portage Lakes State Park*, 2000-11894-AD.

{¶ 3} Plaintiff filed a response noting that despite the fact she was a recreational user of the park premises, the recreational user statute with its immunity provisions should not apply to her situation. Plaintiff disputed defendant's contention that defendant should not have to bear liability for her property damage. Plaintiff pointed out the Park Manager at Beaver Creek State Park, Doug Lyons, wrote a statement (copy submitted) on December 11, 2007, regarding the condition of trees located in the area of plaintiff's September 9, 2007 incident. Lyons reported: "The limb that fell on Amy Hills' vehicle came from a pine tree located in a day use area on the east end of picnic area #1. The trees in this area were inspected sometime during the summer and several trees were noted to have dead limbs." Plaintiff observed defendant's employees were aware of the dangerous condition of certain trees and failed to take proper timely action to remove the hazardous condition presented. Plaintiff contended defendant's acknowledgment regarding the presence of dangerous conditions should constitute proof of actionable negligence and resulting liability.

{¶ 4} Since this incident occurred at Beaver Creek State Park, defendant qualifies as the owner of the "premises" under R.C. 1533.18, et seq.

{¶ 5} "Premises" and "recreational user" are defined in R.C. 1533.18 as follows:

{¶ 6} "(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.

{¶ 7} "(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 leasepayment 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.”

{¶ 8} R.C. 1533.181(A) states:

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

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

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

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

{¶ 13} The state owes no duty to recreational users of state parks, who pay no fee or consideration for admission, to keep the premises safe for entry or use. *Phillips*, 26 Ohio App. 3d 77, 26 OBR 252, 498 N.E. 2d 230. The recreational user statute applies under the facts of the present claim.

{¶ 14} Plaintiff is clearly a recreational user, having paid no fee to enter the premises. Owing no duty to plaintiff, defendant clearly has no liability under a negligence theory. Even if defendant’s conduct would be characterized as “affirmative creation of hazard,” it still has immunity from liability under the recreational user statute. *Sanker v. Ohio Department of Natural Resources* (1982), 81-04478-AD; *Howard v. Ohio Dept. of Natural Resources* (2002), 2001-11146-AD; *Reidel v. Department of Natural Resources*, Ct. of Cl. No. 2005-06384-AD, 2005-Ohio-6585.

{¶ 15} There is no dispute that plaintiff’s property damage occurred on state-owned property while she was engaged in recreational pursuit. Pursuant to R.C. 1533.18 and 1533.181, the court finds that defendant owed no duty of care to keep the premises safe for use by plaintiff, and, consequently, defendant is not liable for plaintiff’s injuries under a theory of negligence. See *Meiser v. Ohio Dept. of Natural Resources*, Ct. of Cl. No.

{¶ 16} 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.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

9/19

filed 10/1/08

Sent to S.C. reporter 12/19/08