

[Cite as *Smith v. Ohio Dept. of Transp.*, 2004-Ohio-5049.]

IN THE COURT OF CLAIMS OF OHIO

DENNIS L. SMITH :
Plaintiff :
v. : CASE NO. 2004-06631-AD
OHIO TRANSPORT. DEPT. : ENTRY OF DISMISSAL
Defendant :

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{¶ 1} On June 17, 2004, plaintiff filed a complaint against defendant,, Department of Transportation. Plaintiff alleges on March 27, 2004, while traveling southbound on Interstate 75 in Dayton, Ohio, he struck a pothole while crossing a bridge prior to exit 54 B. Plaintiff seeks reimbursement for a wheel rim in the amount of \$200.13 from the defendant. Plaintiff submitted the filing fee with the complaint.

{¶ 2} On July 28, 2004, defendant filed a motion to dismiss. In support of defendant’s motion to dismiss, defendant stated in pertinent part:

{¶ 3} “Defendant asserts it is not responsible for the maintenance of the southbound Interstate 75 at Exit 54B within the City of Dayton. On September 19, 2003, the Ohio Department of Transportation entered into an Interstate Lane Mile and Maintenance Agreement with the City of Dayton for maintenance services (See Exhibit A and map).

{¶ 4} “Defendant asserts that pursuant to the agreement between the Ohio Department of Transportation and the City of Dayton, the City of Dayton, and not the defendant, is responsible for maintaining the roadway upon which plaintiff’s incident occurred, that being the Interstate 75 at Exit 54B, within the City of Dayton.”

{¶ 5} Plaintiff has not responded to defendant’s motion to dismiss.

{¶ 6} The site of plaintiff’s incident was within the city limits of Dayton.

{¶ 7} The interstate lane mile and maintenance agreement between the defendant and the City of Dayton in pertinent part states:

{¶ 8} “Section 11.02 of Am. Sub. H.B. 87 and Ohio Revised Code 5501.41, 5501.31, and 5521.01 provide, among other things, that the director of transportation may remove snow and ice, and maintain, repair, improve, and provide lighting upon interstate highways which are located within the boundaries of municipal corporations, adequate to meet the requirements of federal law. When agreed in writing by the director and the legislative authority of a municipal corporation, notwithstanding sections 125.01 and 125.11 of the Revised Code, Section 11.02 of Am. Sub. H.B. 87 provides that the department of transportation may reimburse the municipal corporation for all or any part of the costs as provided by such Agreement, incurred by the municipal corporation maintaining, repairing, lighting, and removing snow and ice from the interstate system. In the interest of public safety and convenience, it is the desire of the parties that the CITY shall perform routine maintenance and repair of the interstate highways using its own labor forces, equipment and materials, or by contracting for these items, with reimbursement from the state . . .

{¶ 9} “Routine maintenance shall include, but shall not be limited to: crack sealing, pothole patching . . .

{¶ 10} “The CITY shall hold the STATE harmless, and the STATE shall not be liable, for injury to person or damage to property arising out of the CITY’s performance of routine, extraordinary, or lighting maintenance which are the subject of this Agreement. This section does not obligate the STATE to provide or pay for any legal representation, to pay attorney’s fees, or to pay any litigation costs associated with any claims asserted by third parties.”

{¶ 11} This agreement was effective from July 1, 2003 to June 30, 2004.

{¶ 12} The site of the damage-causing incident was not the maintenance responsibility of defendant. Consequently, plaintiff case is dismissed.

{¶ 13} Having considered all the evidence in the claim file and, for the reason set forth above, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of

dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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8/18
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