

IN THE COURT OF CLAIMS OF OHIO

DOUGLAS E. MCOWEN :
 1771 N. Main Street :
 Urbana, Ohio 43078 : Case No. 2002-05352-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPT. OF TRANSPORTATION :
 GARAGE :

Defendant :

: : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director
 Department of Transportation
 1980 West Broad Street
 Columbus, Ohio 43223

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FINDINGS OF FACT

{¶1} 1) On March 21, 2002, personnel of defendant, Department of Transportation, conducted snow plowing operations on U.S. Route 68 near Urbana.

{¶2} 2) Plaintiff, Douglas E. McOwen, who owns property located adjacent to U.S. Route 68, indicated one of defendant's snow plows struck his mailbox, mailbox post, and attached sign, which were installed near the roadway where plowing operations occurred. Plaintiff related his post, mailbox, and custom made sign were broken and damaged as a result of being struck by defendant's snow plow.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$477.00, the total cost to rebuild, repair, and reinstall his damaged sign post, mailbox holder, and sign. It appears

plaintiff's damage claim relates totally to the repair and replacement of his sign. Plaintiff submitted the filing fee with the complaint.

{¶4} 4) Defendant explained plaintiff's mailbox, post, and sign were located within defendant's right-of-way for U.S. Route 68. Defendant stated its personnel replaced plaintiff's mailbox in April 2002 using the original mailbox post. Therefore, defendant contended plaintiff's property damages should be limited. Defendant further contended it should not be responsible for any damages to plaintiff's sign because plaintiff was not issued a permit to install a sign in the roadway right-of-way. Defendant did not deny damaging the sign.

CONCLUSIONS OF LAW

{¶5} Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses snow removal operations conducted by defendant. *Andrews v. Ohio Department of Transportation* (1998), 97-07277-AD. Evidence has been presented to show defendant damaged plaintiff's sign and sign post as a direct result of performing snow plowing operations. Consequently, the court concludes defendant's negligence caused the damage to plaintiff's sign. Defendant is liable for all damages claimed despite the fact plaintiff had installed his sign without benefit of permission. Plaintiff should also be reimbursed for the \$25.00 filing fee which is compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶6} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶7} IT IS ORDERED THAT:

{¶8} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶9} 2) Defendant (Department of Transportation) pay

plaintiff (Douglas E. McOwen) \$502.00 and such interest as is allowed by law;

{¶10} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
9/26
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