

[Cite as *King v. Ohio Dept. of Transp.*, 123 Ohio Misc.2d 37, 2003-Ohio-2278.]

KING

v.

OHIO DEPARTMENT OF TRANSPORTATION.

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Court of Claims of Ohio.

No. 2002-08106-AD.

Decided April 29, 2003.

Zan King Jr., plaintiff, pro se.

Thomas P. Pannett, Assistant Legal Counsel, Department of Transportation, for defendant
Department of Transportation.

DANIEL R. BORCHERT, Deputy Clerk.

{¶1} THE COURT FINDS THAT:

{¶2} 1. On September 6, 2002, plaintiff, Zan King Jr., filed a complaint against defendant, Department of Transportation. Plaintiff alleges that on November 20, 2001, as he was traveling south on Sunbury Road just past Holt Avenue, a deer collided with his vehicle. As a result of the incident, plaintiff sustained damages in the amount of \$200, the deductible for his vehicle insurance, and \$25 for reimbursement of the filing fee plaintiff submitted with the form complaint. Plaintiff contends that defendant was in some way responsible for the damages caused by the deer;

{¶3} 2. On February 19, 2003, this court issued an order (Jr. Vol. 733, Pgs. 163-164)

denying defendant's motion to dismiss because plaintiff's damages were not caused by a roadway defect;

{¶4} 3. On March 7, 2003, defendant filed a second motion to dismiss. In support of this motion to dismiss, defendant stated:

{¶5} "Defendant respectfully wishes to notify this Court that the Ohio Department of Transportation is not responsible for the actions of wild animals. Deer are under the jurisdiction of the Ohio Department of Natural Resources. R.C. 1531.08 provides that the Department of Natural Resources through the Chief of the Division of Wildlife has authority and control in all matters pertaining to the protection, preservation, propagation, possession and management of wild animals in Ohio. * * * Such protection of wild animals is an appropriate governmental function undertaken for the benefit of the public at large, and no liability will attach for incidental injuries that may result. *Koch v. Ohio Dept. of Natural Resources* (May 23, 1983), Ct. of Cl. No. 83-01069-AD; *Knox v. Ohio Dept. of Transp.* (Oct. 31, 2001), Ct. of Cl. No. 2001-07647-AD.

{¶6} "Further, as indicated in Defendant's first Motion to Dismiss, the Department of Transportation's investigation indicates that the location of Plaintiff King's incident would be on Sunbury Road just past Holt Avenue in Franklin County when his vehicle encountered a deer. Sunbury Road is not on the state highway system. * * * Thus, ODOT owes no duty to Plaintiff whether he hit a deer, pothole or anything else. See 5501.11; 5501.31; *Harris v. ODOT* (1992), 83 Ohio App. 3d 125. Sunbury Road falls under the maintenance jurisdiction [of] the City of Columbus."

{¶7} 4. Plaintiff did not respond to defendant's investigation report.

{¶8} THE COURT CONCLUDES THAT:

{¶9} 1. The Department of Transportation has no authority or control over the wildlife in the State of Ohio;

{¶10} 2. R.C. 1531.08 states:

{¶11} "In conformity with Section 36 of Article II, Ohio Constitution, providing for the passage of laws for the conservation of the natural resources of the state, including streams, lakes, submerged lands, and swamplands, and in conformity with this chapter and Chapter 1533. of the Revised Code, the chief of the division of wildlife has authority and control in all matters pertaining to the protection, preservation, propagation, possession, and management of wild animals and may adopt rules under section 1531.10 of the Revised Code for the management of wild animals."

{¶12} 3. The court has previously decided a number of cases involving automobiles striking deer. In each case, plaintiff has been unable to prove liability. See *Pawsey v. Ohio Dept. of Natural Resources/Div. of Wildlife* (1983), Ct. of Cl. No. 83-02332-AD; *Tilch v. Ohio Dept. of Natural Resources* (1985), Ct. of Cl. No. 84-07613-AD. The primary reason for failure to prove liability is that it is extremely difficult to prove that the state is negligent in its duty to protect plaintiff from harm caused by wild animals;

{¶13} 4. Defendant is not the appropriate party to sue in this action.

{¶14} IT IS ORDERED THAT:

{¶15} 1. Defendant's motion to dismiss is GRANTED;

{¶16} 2. Plaintiff's case is DISMISSED;

{¶17} 3. The court shall absorb the court costs of this case in excess of the filing fee.

Decision accordingly.
