

[Cite as *Faulkner v. Ohio Dept. of Transp.*, 2003-Ohio-4484.]

IN THE COURT OF CLAIMS OF OHIO

ALBERT A. FAULKNER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2003-01954-AD
 :
 OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
 TRANSPORTATION :
 :
 Defendant :
 :
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{¶1} THE COURT FINDS THAT:

{¶2} 1) On November 10, 2002, plaintiff, Albert A. Faulkner, allegedly sustained property damage to his motorcycle when he struck a pothole while traveling on State Route 48 at Stephens Road. As a result, plaintiff claims to have incurred motorcycle repair costs and seeks reimbursement in the amount of \$1,056.75 from defendant. Plaintiff submitted the filing fee with the complaint;

{¶3} 2) On March 21, 2003, defendant filed a motion to dismiss;

{¶4} 3) In support of the motion to dismiss, defendant stated in pertinent part:

{¶5} “Defendant asserts it is not responsible for the maintenance of the roadway where the alleged hole was located. Defendant’s investigation reveals that the pothole in question was located on State Route 48 @ Stephens Road and a patch had been done by the Warren County Water Department. ODOT’s Warren County Resident Engineer, Dan Mendel, investigated this claim and he spoke to Steve Gorsuch of the Warren County Water Department. Mr. Gorsuch stated that a week before this incident they had a valve that was leaking and they had to dig up State Route 48 in order to fix it. The hole was covered with cold patch but it didn’t hold. (See Exhibit A.) As such, this incident is not the

responsibility of the Ohio Department of Transportation but that of the Warren County Water Department.”;

{¶6} 4) Plaintiff has not responded to defendant’s motion to dismiss.

{¶7} THE COURT CONCLUDES THAT:

{¶8} 1) R.C. 5521.11 in pertinent part states:

{¶9} “Chapters 5501., 5511., 5512.*, 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code do not prohibit the board of county commissioners, at the expense of the county, or in co-operation with the board of township trustees, or municipal authorities, at the expense of the municipal corporation, or in co-operation with the board of township trustees, from constructing any part of the state highway system, or the bridges and culverts thereon, within such county, municipal corporation, or township . . .”;

{¶10} 2) R.C. 305.12 in pertinent part states:

{¶11} “The board of county commissioners may sue and be sued, and plead and be impleaded, in any court. It may bring, maintain, and defend suits involving an injury to any public, state, or county road, bridge, ditch, drain, or watercourse in the county with respect to which the county has the primary responsibility to keep in proper repair, and for the prevention of injury to them.”;

{¶12} 3) In order to effect a just and reasonable result, R.C. § 305.12 must be construed as imposing liability upon a board of commissioners for its negligence, whenever such board has assumed, or has been conferred by statute with, primary responsibility for keeping in proper repair roads or bridges, or both, in its county. *Starcher v. Logsdon* (1981), 66 Ohio State 2d 57, 20 Ohio Op3d 45, 419 NE 2d 1089;

{¶13} 4) Defendant is not responsible for the site of plaintiff’s property damage incident.

{¶14} IT IS ORDERED THAT:

{¶15} Defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED.

The court shall absorb the 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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DRB/laa
7/30
Filed 8/13/03
Sent to S.C. reporter 8/25/03