

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

LOURDES ELLIOTT,
Claimant,

FILED
FEB 08 2010
Tennessee Claims Commission
CLERK'S OFFICE

CLAIM NO. 20-091-386
Regular Docket

STATE OF TENNESSEE,
Defendant

COMPUTER _____
DOCKETED _____
C/S-CORRE _____
DCA _____
AG _____
ALJ _____
FEE PAID _____
NOTICE SENT _____
FILED _____

ORDER OF DISMISSAL

This matter came to be heard on Claimant's Claim for Damages, *Defendant's Motion to Dismiss* and memorandum in support thereof, *Affidavit of Todd Miller*, Claimant's response thereto and, indeed, the record as a whole.

I.

FACTS

It is undisputed that on May 20, 2009, Lourdes Elliott was camping at Chickasaw State Park. As she stepped out of her truck and stepped forward, her ankle rolled and she fell down an

embankment. Claimant states she fell, at least in part, because the wood barrier was rotting and the pavement uneven. Claimant injured her ankle, tailbone, neck, back and right shoulder.

Claimant seeks to recover damages for her injuries under § 9-8-307(a)(1)(C), Tenn. Code Ann. for creating or maintaining a dangerous condition on state-controlled real property.

In its motion to dismiss, the State asserts that it is shielded from liability pursuant to the Recreational Use Statute, Tenn. Code Ann. § 70-7-101 *et. seq.*

II.

RECREATIONAL USE STATUTE

Tenn. Code Ann. § 70-7-101 *et. seq.* provides the State with limited immunity for injuries occurring on state-owned property during recreational use. *Parent v. State*, 991 S.W.2d 240 (Tenn. 1999) The Tennessee Supreme Court has developed a two-pronged inquiry to determine whether the State is entitled to immunity, requiring the trier of fact to consider: “(1) whether the activity alleged is a recreational activity as defined by the statute; and, if so, (2) whether any of the statutory exceptions or limitations to the immunity defense are applicable.” *Id.* at 243

Tenn. Code Ann. § 70-7-102 provides as follows:

The landowner . . . owes no duty of care to keep such land or premises safe for entry or use by others for such recreational activities as hunting, fishing, trapping, camping, water sports, white water rafting, canoeing, hiking, sightseeing, animal riding, bird watching, dog training, boating, caving, fruit and vegetable picking for participant's own use, nature and historical studies and research, rock climbing, skeet and trap shooting, skiing, off-road vehicle riding and cutting or removing wood for the participant's own use. . .

The Complaint form and other documents filed by Ms. Elliott make it clear that she was camping at Chickasaw State Park at the time of her fall. This is clearly a recreational activity as defined by the statute.

Tenn. Code Ann. § 70-7-104 sets forth the following limitations to the immunity granted by the statute:

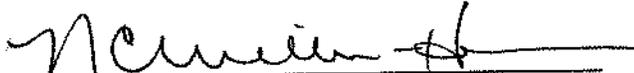
- (1) Gross negligence, willful or wanton conduct which results in a failure to guard or warn against a dangerous condition, use, structure or activity;
- (2) Injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose was granted; to third persons or to persons to whom the person granting permission, or to the landowner, lessee, occupant, or any person in control of the land or premises, owed a duty to keep the land or premises safe or to warn of danger.

In the case at bar, the Commission **FINDS** that the allegations made by Ms. Elliott do not rise to gross negligence or willful or wanton conduct on the part of state officials.

For the foregoing reasons, the Commission **FINDS** that the Claimants' claim is barred by the Recreational Use Statute.

Claimant's claim is, accordingly, **DISMISSED**.

IT IS SO ORDERED.



NANCY C. MILLER-HERRON
COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Order has been mailed to:

Ms. Lourdes Elliott
58232 Ivanhoe Drive
Yucca Valley, CA 92284

Ms. Stephanie A. Bergmeyer, Esq.
Assistant Attorney General
Civil Rights & Claims Division
P.O. Box 20207
Nashville, Tennessee 37202

This 8 day of February, 2010.


Marsha Richeson, Clerk