

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

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TN CLAIMS COMMISSION
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2014 FEB 18 A 10:03

JENNIFER HOLLAND,

Claimant,

v.

Claim No. T20090951

STATE OF TENNESSEE,

Defendant.

ORDER GRANTING STATE OF TENNESSEE'S
MOTION FOR SUMMARY JUDGMENT

This cause comes before the Commission on *Defendant State of Tennessee's Concise Statement of Material Facts as to Which There is No Genuine Dispute, Defendant's Motion for Summary Judgment* and memorandum in support thereof, the *Affidavit of Terry Allen*, and, indeed, the record as a whole.

This case is apparently brought pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(J), relating to dangerous conditions on state highways, and Tenn. Code Ann. § 9-8-307(a)(1)(I), relating to Defendant's alleged negligence in the inspection and maintenance of state highways.

Claimant has filed her claim against the State of Tennessee alleging that she suffered severe, disabling and permanent injuries when she stepped into a hole in a grassy area adjacent to the parking lot of Johnny's Kwik Stop and Deli on State Route 88 in Maury City, Tennessee.

In response to Claimant's allegations, the Defendant filed its Motion for Summary Judgment pursuant to Rule 56.02 of the *Tennessee Rules of Civil*

Procedure. Defendant moves for summary judgment on the grounds that there is no genuine issue of material fact and the State is entitled to judgment as a matter of law, in that the Claimant has failed to show that the area where she fell is maintained by the State of Tennessee.

In support of its position, Defendant proffers the *Affidavit of Terry Allen*, District Maintenance Supervisor for the Tennessee Department of Transportation (TDOT), District 44. Mr. Allen states that the area where Ms. Holland fell is within the Maury City limits, where “the State only maintains the actual paved roadway, and not any portion off the pavement.” (Allen Aff., para. 2) The State also proffered the deposition testimony of Johnny Mayfield who stated that Maury City would come out during the summer months to maintain the property. (February 23, 2011, Deposition of Johnny Mayfield, p. 19, line 18- p. 20, line 24) Mayfield further testified that he complained about the hole to Joe Hall, superintendent of Maury City. Hall said at first he thought the State was responsible, but later sent Maury City employees to repair it. (Mayfield Dep., p. 39, line 2- p. 40, line 24) Mayfield testified that he had never seen any state workers do work in that location, only his own employees and employees of Maury City. (Mayfield Dep., p. 43, lines 9-14)

Claimant has produced no countervailing affidavits or proof.

The Claims Commission has subject matter jurisdiction over the actions of state employees regarding their negligent maintenance of highways designated by the department of transportation as being on the *state system of highways or the state system of interstate highways*, § 9-8-307(a)(1)(l), and over dangerous

conditions on *state maintained highways*, § 9-8-307(a)(1)(J). (Emphasis added)
Because the State maintains only the actual paved roadway of State Route 88 and the grassy area where Claimant fell is not state maintained/part of the state system of highways, the Commission **FINDS** that the Claimant has failed to state a cause of action within the Claims Commission's jurisdiction.

The Commission, therefore, **FINDS** that there is no genuine issue of material fact regarding whether any employee of the Tennessee Department of Transportation negligently inspected or maintained/failed to remedy a dangerous condition on the roads in question.

Defendant's Motion for Summary Judgment is **GRANTED**. Claimant's claim is hereby **DISMISSED**.

IT IS SO ORDERD.


NANCY C. MILLER-HERRON
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order was forwarded via hand-delivery or first-class mail, postage prepaid, this 18 day of February, 2014, to the following:

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**PAULA SWANSON, CLERK
TENNESSEE CLAIMS COMMISSION**