

[Cite as *Adkins v. Ohio Dept. of Transp.*, 2017-Ohio-8081.]

KENNETH ADKINS

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2016-00894-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On December 5, 2016, plaintiff Kenneth Adkins (hereinafter “plaintiff”) filed a complaint in this Court against the Ohio Department of Transportation (hereinafter “ODOT”). Plaintiff resides at 1817 State Route (“SR”) 28, Goshen, Ohio 45122 and this portion of SR 28 is maintained by ODOT. Plaintiff claims that during the summer of 2015 “when replacing bridge on OH St. Rt. 28 at 132, my water line was damaged.” Plaintiff also alleges that “[t]hey took old concrete from bridge and dumped on my water line. As a result partially crushed my line and eventually caused it to rupture.” Plaintiff alleges he suffered \$5,915.71 in damages to his water line and seeks reimbursement for his repair and water bill costs.

{¶2} With his complaint, plaintiff included a letter dated October 31, 2016 from Robert W. Seyfried Jr, Goshen Township Service Director. The letter states that plaintiff went to the Township for help with his water line, which runs from his home down the grade toward the bridge that was rebuilt on SR 28. The letter states that “[w]here the rip rap was placed was over his water line which was where the leak was.” Mr. Seyfried called the State several times, and it was several weeks before the State responded and then he had the leak fixed. Plaintiff also included a drawing of the road and water line.

{¶3} Plaintiff included a second letter dated November 18, 2016 from Stephen L. Knipp, Clermont County Water Resources Department Assistant Director of Operations

and Maintenance. In the letter, Mr. Knipp relates that he and plaintiff met at the State Route 28 crossing of the O-Bannon creek early that summer and that “[a]fter inspecting the area, I could see that the private water line serving your home had an obvious severe fracture allowing public water to be discharged into O-Bannon Creek. It appeared that dump rock had been recently placed on top of the area where your line is located. \* \* \* It is my professional opinion that the heavy equipment working in this area coupled with the weight of the newer dump rock could have caused the damage to your water line.”

{¶4} Finally, plaintiff included his water bill with service dates from May 26, 2016 to June 29, 2016. The bill shows a year long history of water consumption, with a drastic spike in the current service period. Specifically, plaintiff’s balance from the previous service period was \$25.05, and his balance for the service period May 26-June 29, 2016 was \$2,650.66.

{¶5} In its Investigation Report filed February 28, 2017, ODOT indicates that the area of the incident is at mile marker 3.3 to 3.7 on SR 38 in Clermont County. The agency states that ODOT Project Number 0538(14) was under construction by John R. Jurgensen Company to improve sections in Goshen Township, Clermont County, Ohio. The plans and specifications included replacing an existing three span bridge over O’Bannon Creek with a single span modified prestressed concreted I-beam bridge.

{¶6} ODOT states that pursuant to that contract, “John R. Jurgensen Company is an independent contractor and assumes control of the construction work zone \* \* \*. In ODOT’s contract with John R. Jurgensen Company, the contractor indemnifies ODOT for its own negligence. (See Exhibit B). Thus, John R. Jurgensen Company is responsible for any occurrences or mishaps in the area in which they are working; Plaintiff’s damage incident is such an occurrence.”

{¶7} The agency maintained that it had zero other complaints concerning water leaks in the area of incident during all of 2015. Further, ODOT states that “[t]he

substantiating documentation provided from plaintiff for the Clermont County Water Resources Center was for the month of May, 2016-six months after the project was completed by John R. Jurgensen Company (November 13, 2015); had the project caused a problem, it would have been detected closer to the closing of the project.”

{¶8} However, the Court notes that ODOT’s reading of the November 18, 2016 letter from the Clermont County Water Resources Center was incorrect. While the letter was written on November 18, 2016, the letter clearly states that Mr. Knipp and plaintiff met at the site of the water leak in early summer 2016. Second, it is clear from the evidence submitted by plaintiff that there was damage to his water system in June 2016. His water bill shows an increase in monthly water consumption of \$2,625.61, after a year of monthly consumption near \$25.05.

{¶9} ODOT claims that pursuant to *Gore v. ODOT*, it is entitled to rely on its independent contractor, here John J. Jurgensen Company, to perform work properly and in a workmanlike manner, and any failure on the part of the contractor cannot be imputed to ODOT. In *Gore*, the Tenth District Court of Appeals stated the general rule that “although an employer may be liable for the negligent acts of an employee within the scope of that employment, one who engages an independent contractor is not liable for the negligent acts of the contractor or its employees. The distinction relates to the right to control the manner of performing the work, and if the manner or means of performing the work is left to one responsible to the employer for the result alone, an independent contractor relationship exists.” *Gore v. Ohio DOT*, 10th Dist. Franklin No. 02AP-996, 2003-Ohio-1648, ¶ 15; citing *Pusey v. Bator*, 94 Ohio St.3d 275, 278, 2002 Ohio 795, 762 N.E.2d 968 (2002). In *Gore*, there was no dispute that the mowing company was an independent contractor for ODOT, as the contract between ODOT and the mowing company had a specific provision addressing debris.

{¶10} In this case, the Court concludes that John R. Jurgensen Company was an independent contractor for ODOT, and thus, under Ohio law, ODOT is not liable for the negligent acts of John R. Jurgensen Company.

{¶11} As such, the only remaining issue is whether ODOT was negligent in the way it managed the contractor. As we consider whether ODOT breached its duty to the public in keeping the construction area safe, the Court must take into account that this was an active construction zone. Ohio law is clear that ODOT cannot guarantee the same level of safety during a highway construction project as it can under normal traffic conditions. *Feichtner v. Ohio Dept. of Transp.*, 114 Ohio App.3d 346, 354 (1995). The test is whether, under the totality of the circumstances, "ODOT acted sufficiently to render the highway reasonably safe for the traveling public during the construction project." *Basilone v. Ohio Dept. of Transp.*, Hamilton App. No. 00AP-811 (Feb. 13, 2001), citing *Feichtner*, *Lumbermens Mut. Cas. Co. v. Ohio Dept. of Transp.*, 49 Ohio App.3d. 129 (1988).

{¶12} In this case, there is nothing in the record that would allow the Court to find that ODOT did not act appropriately to manage the contractor and keep the construction area safe. The plaintiff did not offer any evidence to counter what was in ODOT's report regarding this element. As such, plaintiff's claim against ODOT must fail. Any claim that plaintiff might have appears to be against the John R. Jurgensen Company, which must be pursued in the Clermont County Courts and not the Court of Claims.

KENNETH ADKINS

Plaintiff

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OHIO DEPARTMENT OF  
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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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Defendant

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Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of the defendant. Court costs shall be absorbed by the Court.

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MARK H. REED  
Clerk