

[Cite as *Tye v. Ohio Dept. of Transp.*, 2001-Ohio-1848.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL TYE	:	
Plaintiff	:	CASE NO. 99-14629
v.	:	<u>MAGISTRATE DECISION</u>
DEPT. OF TRANSPORTATION	:	Lewis F. Pettigrew
Defendant	:	
: : : : : : : : : : : : : : : :		

On August 20, 2001, this case was tried to the court. At the close of plaintiff's case, defendant moved for dismissal pursuant to Civ.R. 41(B)(2). The court finds that plaintiff failed to produce sufficient evidence to support his claim and that, upon the facts and the law, plaintiff has shown no right to relief. Specifically, plaintiff testified that the construction project that allegedly caused the damage to his real property ended in 1996 and that he was in contact with defendant about the damage throughout 1997. Because plaintiff's complaint was not filed until December 8, 1999, more than two years after plaintiff's cause of action accrued, plaintiff's claim is barred by R.C. 2743.16 as being untimely filed.

Additionally, plaintiff failed to present any competent, credible evidence that the damage to his real property was directly and proximately caused by defendant's alleged negligence. Plaintiff admitted that he had repaired damage to the same area of his home prior to the construction project, and he presented no expert testimony to establish that the instant

[Cite as *Tye v. Ohio Dept. of Transp.*, 2001-Ohio-1848.]

damages were caused by defendant. For the foregoing reasons, the court granted defendant's motion.

Judgment is hereby recommended in favor of defendant.

LEWIS F. PETTIGREW
Magistrate

Entry cc:

Michael Tye
1419 N. Superior
Toledo, Ohio 43604

Pro se

James P. Dinsmore
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

LP/cmd
Filed 8-31-2001
To S.C. reporter 10-4-2001