

[Cite as *Wright v. Ohio Dept. of Transp.*, 2002-Ohio-6439.]

IN THE COURT OF CLAIMS OF OHIO

NANCY P. WRIGHT :  
Plaintiff : CASE NO. 2002-01730  
v. : ENTRY GRANTING DEFENDANT'S  
OHIO DEPT. OF TRANSPORTATION : MOTION FOR SUMMARY JUDGMENT  
Defendant :

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{¶1} On October 2, 2002, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff has not filed a response. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "\*\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's

favor. \*\*\*" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is undisputed that plaintiff is the owner of a retail business known as Nancy's Paperbacks located at 5551 Fulton Rd. N.W., Canton, Ohio. Plaintiff alleges defendant interfered with her business and caused her to lose income by closing Fulton Road during a road construction project. In her complaint, plaintiff alleges that defendant "significantly affected" access to her business.

{¶5} In *Bowles v. Ohio Department of Transportation* (1993), 63 Ohio Misc.2d 373, this court held that in order for a business owner to recover from the state as a result of interference with the right of ingress and egress, the business owner must prove by a preponderance of the evidence that there was substantial, material and unreasonable interference amounting to an absolute cutting-off of access to the property. *Id.* at 376. This court has consistently held that a business person does not have a cause of action merely because ODOT causes one road to be closed, which in turn makes it more difficult for patrons to have access to the business establishment. See, e.g., *Noble dba BJ's Market v. ODOT* (Mar. 20, 1990) Court of Claims No. 90-01427; *Clinton R. Dibble dba A Motor Sales v. ODOT* (Sept. 26, 1989), Court of Claims No. 89-09134.

{¶6} In support of its motion for summary judgment, defendant submitted the affidavit of District 4 Project Engineer, Frank Rahmlow, who stated that he has personal knowledge of the road construction project referenced in plaintiff's complaint (ODOT 322 of 2000); that the project at issue involved the widening of Fulton

Road N.W. in Canton, Ohio; that the project's construction began on August 7, 2000, and ended on May 10, 2002; and that the "strip mall" where plaintiff's business is located was, at all times during the project, accessible to the traveling public. Plaintiff did not submit any evidence to rebut Rahmlow's statement regarding the accessibility of plaintiff's business.

{¶7} Based on the undisputed evidence, the court finds that reasonable minds must conclude that there was not a substantial, material, and unreasonable interference with plaintiff's right of ingress and egress amounting to an absolute cutting-off of access to plaintiff's business. Accordingly, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶8} Defendant's motion for summary judgment is hereby GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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FRED J. SHOEMAKER  
Judge

Entry cc:

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ENTRY

LP/cmd

Filed 11-12-2002

Jr. Vol. 724, Pgs. 141-143

To S.C. reporter 11-22-2002