

[Cite as *Franz v. Ohio Dept. of Transp.*, 2003-Ohio-7135.]

IN THE COURT OF CLAIMS OF OHIO

SHERYL LYNN FRANZ	:	
Plaintiff	:	
v.	:	CASE NO. 2003-09483-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

: : : : : : : : : : :

{¶1} Pursuant to a contract with defendant, Department of Transportation (DOT), the Complete General Construction Company (Complete General), performed roadway construction work on State Route 123 in Warren County. During August, 2003, Complete General was involved with construction activity on a state roadway identified as West Main Street in Lebanon, Ohio. As part of the road construction operation on West Main Street, employees of Complete General positioned orange traffic control barrels down the center of the street. On August 7, 2003, employees of the City of Lebanon removed a light pole located at the southeast corner of West Main Street near the driveway entrance of the Lebanon Public Library. This light pole had been erected about two feet adjacent to the raised curb of West Main Street and abutting the paved exit area from the library. The light pole base (approximately two feet in height) was left in position along West Main Street and the library exit area. Personnel of Complete General were performing road construction work on West Man Street before, during, and after the time the light pole was removed.

{¶2} On August 7, 2003, after the light pole was removed, plaintiff, Sheryl L. Franz, drove a truck into the entrance area of the Lebanon Public Library and parked. The

truck is owned by Charles R. Franz, plaintiff's spouse. A few minutes after parking the truck, plaintiff began to exit the area by attempting to turn right from the library exit onto West Main Street. As plaintiff negotiated the right turn she observed an orange traffic control barrel positioned in the center of West Main Street. In an attempt to maneuver the truck to avoid the barrel in the street, plaintiff made a hard right turn causing the right front door and running board of the truck to strike the set light pole base located adjacent to West Main Street and the library exit. Plaintiff has asserted Complete General is responsible for the damage to the truck caused by the light pole base. Plaintiff reasoned Complete General was in control of the area since it was designated a "work zone activity area." Plaintiff maintained Complete General had a duty to warn motorists of the light pole base since it created a hazard for traffic, despite the fact the set base was positioned in an area not designated for driving. Furthermore, plaintiff has contended defendant, Department of Transportation (DOT), is ultimately responsible for any property damage to the truck, since defendant seemingly controlled the construction project performed by Complete General. Plaintiff filed this complaint seeking to recover \$525.00, the insurance deductible for vehicle repair, plus filing fees.

{¶3} Defendant denied any liability in this matter. Defendant asserted Complete General, pursuant to contract, has accepted responsibility for any damage claims arising out of incidents occurring in the roadway construction zone under Complete General's control. Defendant submitted a copy of its contract with Complete General which states Complete General agrees to indemnify and save harmless DOT for any damages to property sustained by a person due to negligence on the part of Complete General. Essentially, defendant contended under the language of the contract, DOT is not the proper party to sue in a claim of this type.

{¶4} Additionally, defendant explained neither DOT personnel nor Complete General employees removed the light pole leaving a base foundation which allegedly created a hazardous condition. The light pole was removed by employees of the City of Lebanon, who had no contractual relationship with DOT. Defendant asserted DOT cannot be held liable for damages caused by a condition created by City of Lebanon personnel.

Defendant further asserted plaintiff's own negligent driving in striking an object located off the traveled portion of the roadway was the sole cause of the August 7, 2003 property damage event. Defendant also contended the light pole foundation was not located within a work zone controlled by Complete General.

{¶5} Defendant argued that even if Complete General was responsible for a hazardous condition inside a work zone, DOT cannot be held liable for any negligent acts or omissions of its independent contractor. Defendant suggested its duty to maintain the roadway in a safe drivable condition was delegated to Complete General by contractual agreement.

{¶6} Defendant cited the case of *Gore v. Ohio Dept. of Trans.*, Franklin App. No. 02AP-996, 2003-Ohio-1648, for the proposition that DOT as a principle cannot be held liable for any negligence of an independent contractor such as Complete General. *Gore*, id. involved a situation where a motorist was injured as a result of lawn mowing activities along a state highway conducted by an independent contractor of the Department of Transportation. The court in *Gore* held any duty to exercise reasonable care for the safety of motorists while performing roadside lawn mowing is delegable. The issue of whether or not any duty owed arising from highway construction is delegable was not specifically addressed. However, defendant insisted, in the instant claim, it cannot bear any liability for any negligence on the part of Complete General in performing highway construction activities.

{¶7} In order for plaintiff to state a prima facie case, plaintiff must show her property damage was caused by the maintenance or creation of a hazardous condition located in the traveled portion of the roadway. No act by defendant or act defendant had control over caused plaintiff's property damage. The sole cause of plaintiff's damage was her negligent driving maneuver. Plaintiff's claim is denied.

{¶8} 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 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Sheryl Lynn Franz
1121 Navaho Drive
Lebanon, Ohio 45036

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa
12/2
Filed 12/9/03
Sent to S.C. reporter 12/29/03