

IN THE COURT OF CLAIMS OF OHIO

CHRISTENE A. HENDERSON :

Plaintiff :

v. :

CASE NO. 2003-11496-AD

OHIO DEPT. OF TRANSPORTATION :

MEMORANDUM DECISION

Defendant :

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{¶1} On August 17, 2003, personnel of Aero-Mark were performing yellow center line painting operations on State Route 53 between Kirby, Ohio and Upper Sandusky, Ohio in Wyandot County. Aero-Mark was conducting this roadway painting operation in accordance to contractual specifications with defendant, Department of Transportation ("DOT"). DOT asserted Aero-Mark, pursuant to the contract terms, accepted responsibility for any damage claims arising out of incidents occurring in the roadway area under Aero-Mark's control.

{¶2} Plaintiff, Christene A. Henderson, stated she was traveling on State Route 53 on August 17, 2003 when she encountered Aero-Mark's painting operation. Plaintiff related she followed a trail paint vehicle for several miles until she was directed to pass the vehicles involved in the roadway painting operation. Plaintiff explained she drove over the freshly painted center line on the roadway, passed the Aero-Mark vehicles, and proceeded to her destination. After arriving at her destination and examining her car, plaintiff discovered the automobile's body bore substantial

paint spray damage. Consequently, plaintiff filed this complaint seeking to recover \$2,210.40, the cost of automotive repair and related expenses, as well as a claim for filing fee reimbursement.

{¶3} Plaintiff has contended DOT is responsible for her property damage despite the fact DOT's contractor, Aero-Mark, was in control of the entire roadway painting activity.

{¶4} Defendant argued it is not the proper party to sue under the facts of the present action. Defendant submitted a copy of its contract with Aero-Mark, which states Aero-Mark agrees to indemnify and save harmless DOT for any damages to property sustained by a person due to negligence on the part of Aero-Mark.

{¶5} Defendant argued that even if Aero-Mark was responsible for creating 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 Aero-Mark by contractual agreement.

{¶6} Defendant cited *Gore v. Ohio Dept. of Trans.*, Franklin App. NO. 02AP-996, 2003-Ohio-1648, for proposition that DOT as a principle cannot be held liable for any negligence of an independent contractor such as Aero-Mark. *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 a highway painting operation 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 Aero-Mark in performing highway painting activities. In the instant claim, the court concludes DOT may by contract delegate its duty of care in situations where an independent contractor undertakes roadway painting operations. DOT cannot be held liable for any negligence of Aero-Mark in connection with the painting operations of August 17, 2003. DOT is not the proper party defendant in this action and consequently, this claim is dismissed.

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CHRISTENE A. HENDERSON :  
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v. : CASE NO. 2003-11496-AD  
OHIO DEPT. OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE  
Defendant : DETERMINATION

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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 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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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Christene Henderson  
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Plaintiff, Pro se

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For Defendant

RDK/laa  
2/25  
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