IN THE COURT OF CLAIMS OF OHIO

DONALD G. DAVIS :

Plaintiff :

v. : CASE NO. 2003-12298-AD

OHIO DEPT. OF TRANSPORTATION, DIST. #9 : MEMORANDUM DECISION

:

Defendant

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{¶1} On November 18, 2003, at approximately 1:20 p.m., a truck owned by plaintiff, Donald G. Davis, was damaged while parked on the premises of defendant, Department of Transportation(DOT). Specifically, the bed panel of plaintiff's truck was dented when it was struck by a barn door which had been blown from its hinges by a strong wind gust. The barn was located at DOT's District #9 facility in Chillicothe, Ohio. At the time of the property damage incident, plaintiff, an employee of CTL Engineering, was performing work related duties for the DOT District 9 Test Lab.

{¶2} Plaintiff stated he and Curt Hatton, an employee of DOT, were working at the DOT District 9 Test Lab facility on November 18, 2003, moving concrete air meters to a storage barn. Plaintiff recollected, "[w]e had the large double doors on the barn open and a gust of wind blew the left door off its hinges and the door fell hitting and putting a dent in the top right bed panel of my truck." The truck was apparently parked at some area near the storage barn. Plaintiff submitted a written statement from Curt Hatton in which he related a wind gust blew the left barn door off its

hinges onto plaintiff's parked truck. Both plaintiff and Hatton recalled that they had opened the storage barn doors.

{¶3} Plaintiff has implied his truck was damaged as a proximate cause of negligence on the part of DOT in maintaining a hazardous condition on its premises. Plaintiff filed this complaint seeking to recover $919.27, the total cost of repairing his truck. Plaintiff acknowledged he has insurance coverage for damage to his vehicle with a $250.00 deductible provision. However, plaintiff indicated he did not receive any payment for vehicle repair from his insurer. Plaintiff paid the requisite filing fee.

{¶4} Defendant has argued plaintiff's claim should be limited to his $250.00 insurance coverage deductible. The argument is not well taken. R.C. 2743.02(D) states in pertinent part: "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant." (Emphasis added.) The statute expressly declares insurance proceeds have to be actually received by a plaintiff in order for the damage reduction provision of R.C. 2743.02(D) to take effect. Plaintiff's damage claim is $919.27, the total cost stated for repairing his truck.

{¶5} Defendant asserted plaintiff has failed to produce evidence to show his property damage was proximately caused by any negligent act or omission on the part of DOT personnel. In fact, defendant professed plaintiff's own acts may have caused the damage to his truck. Defendant related, "plaintiff did not use good judgment in either securing the doors or parking his vehicle to make it possible for the wind to cause the doors to come loose and hit his truck on November 18, 2003." The trier of fact disagrees. No evidence available shows plaintiff failed to properly secure

the barn doors, or positioned the doors in such a manner to make the doors susceptible to being torn from three separate hinges by a moderate gust of wind. Furthermore, no evidence has shown plaintiff parked his truck in a particular position to deliberately expose the vehicle to a possible danger presented by a wind blown door.

{¶6} Alternatively, defendant implied plaintiff's property damage was proximately caused by a force of nature, high winds, and not by a faulty door. Defendant explained, "that on the day of the incident, abnormally high winds occurred in the area." Defendant stated wind speeds of up to forty-four (44) miles per hour were recorded in the Chillicothe area. Defendant submitted a copy of a climatological data sheet from the National Weather Service for the Chillicothe area on November 18, 2003. This data sheet lists maximum wind speed recorded at 20.7 mph. Wind speed at 1:14 p.m. on November 18, 2003, was 17.3 mph. Wind gusts recorded at that time hit 25.3 mph. Based on this meteorological data, defendant contended plaintiff's damage was the result of natural conditions and not any negligence on the part of DOT.

{¶7} Additionally, defendant denied having any notice that the damage-causing barn door was faulty. Defendant related the barn building was inspected on September 4, 2003, by Jamie L. Stewart, Facilities Manager, Ohio Department of Transportation, District 9. Stewart determined, "there were no notable problems with the doors of the structure," when the inspection was conducted more than two months prior to the incident forming the basis of this claim. Stewart subsequently noted in investigating the November 18, 2003 damage occurrence, that the barn door was lifted from its hinges with the hinges remaining in place. The door was apparently wrested from its hinges without damaging the hinges. Defendant submitted a copy of the September 4, 2003,

inspection report in reference to all facilities at the DOT, District 9 property. This report titled "Headquarters Property Assessment" is not particularly helpful to the trier of fact.

{¶8} Liability for negligence is predicated upon injury caused by the failure to discharge a duty owed to the injured party. *Moncol v. Bd. of Education* (1978), 55 Ohio St. 2d 72. Therefore, to prevail in an action founded upon negligence, plaintiff must demonstrate:

1)that defendant had a duty, recognized by law, requiring conformance of conduct to a certain standard for the protection of plaintiff;

2)that the defendant failed to conform its conduct to that standard; and

3)that the defendant's conduct proximately caused the plaintiff to sustain actual loss or damage.

{¶9} In the instant claim, defendant suggested plaintiff's property damage was caused solely by high winds, an "Act of God." Defendant denied plaintiff's damage was the result of any negligence attributable to DOT.

{¶10} It is well-settled Ohio law that if an "Act of God" is so unusual and overwhelming as to do damage by its own power, without reference to and independently of negligence by defendant, there is no liability. *Piqua v. Morris* (1918), 98 Ohio St. 42, 49. "The term 'Act of God' in its legal significance, means any irresistible disaster, the result of natural causes, such as earthquakes, violent storms, lightning and unprecedented floods." id. at 47-48. "An act of God must proceed from the violence of nature or the force of the elements alone and the agency of man must have had nothing to do with it." *GTR Land Co. v. Wilson Cabinet Co.*, 1988 Ohio Ap. LEXIS 5393*13 (Dec. 30, 1988), Holmes App. No. CA-386, unreported, quoting 1 O. Jur. 2d, Act of God at

2.

{¶11} However, in a situation where two causes contribute to an injury, one cause which is defendant's negligence and the other cause, an "Act of God," liability shall attach to defendant if plaintiff's damage would not have happened but for defendant's negligence. *Nationwide Ins. Co. v. Jordan* (1994), 64 Ohio Misc. 2d 30. If proper care and diligence on the part of defendant would have avoided the act, it is not excusable as an "Act of God." *Bier v. City of New Philadelphia* (1984), 11 Ohio St. 3d 134. In the instant case, the court concludes the wind gust recorded of perhaps 25 mph was insufficient as an "Act of God" to solely cause the barn door to be blown cleanly from its hinges. The door was either negligently installed or negligently maintained by DOT. A moderate wind gust alone could not have resulted in a well maintained door being lifted from its hinges and blown about the area. Consequently, defendant is liable to plaintiff for the damages claimed, plus filing fees.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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5/25
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