

[Cite as *Davis v. Ohio Dept. of Transp.*, Dist. 7, 2004-Ohio-3821.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT DAVIS :

Plaintiff	:	CASE NO. 2003-11399
	:	Judge J. Warren Bettis
v.	:	
	:	<u>ENTRY GRANTING SUMMARY</u>
OHIO DEPARTMENT OF	:	<u>JUDGMENT TO DEFENDANT</u>
TRANSPORTATION, DISTRICT 7	:	
	:	
Defendant	:	
: : : : : : : : :	:	

{¶1} On May 12, 2004, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff has not filed a response.

{¶2} On June 11, 2004, this court conducted a pretrial conference wherein plaintiff stated that he did not realize that the filing of a complaint would result in a trial. Plaintiff also related that he had not yet filed a claim with his insurance carrier for the property damage at issue in this case. Plaintiff was informed that this court must reduce any damages award by the amount a plaintiff receives from a collateral source such as insurance, pursuant to R.C. 2743.02(D).

{¶13} Plaintiff has not filed any additional pleadings; the case is now before the court for non-oral hearing on defendant's motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

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

{¶15} "*** 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.

{¶6} In his complaint, plaintiff alleges that his vehicle was "splattered with yellow paint on the left side and rear" as a result of defendant's negligent painting operations of the highway.

In its motion for summary judgment, defendant argues that its painting operation was conducted in compliance with the Ohio Manual of Uniform Traffic Control Devices; that if plaintiff's vehicle was "splattered" with yellow paint it was the result of plaintiff's own negligent driving. In support of defendant's argument, defendant submitted the affidavit of Scott T. Kasler, its District 7 project manager. The affidavit provides, in pertinent part:

{¶7} "1. I have personal knowledge of the facts contained in this affidavit and I am competent to testify to the matters stated herein.

{¶8} "2. ***

{¶9} "3. On October 16, 2003, ODOT District 7 traffic crews were painting both edge and lane lines on Interstate 70 in Montgomery County, Ohio.

{¶10} "4. ODOT traffic crews were using 2-minute fast dry paint for their striping operations on the day in question.

{¶11} "5. On the relevant date, ODOT was using a centerline striper which was equipped with strobe lights and wet paint signs. Additionally, two follow trucks were in use, both equipped with strobe lights and signs.

{¶12} "6. Two full size electronic arrow boards were also present as additional warning devices.

{¶13} "7. The fact that the damage to Plaintiff's was from yellow paint indicates that Mr. Davis was driving over the median edgeline and had left the marked lanes.

{¶14} "8. ***.

{¶15} The Tenth District Court of Appeals has stated:

{¶16} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. If the moving party

satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1, 2.

The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc. v. Law Offices of DeLibera, Lyons & Bibbo*, Franklin App. No. 01AP-1137, 2003-Ohio-1663.

{¶17} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence is that no genuine issues of material fact exists for trial and defendant is entitled to judgment as a matter of law.

{¶18} 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.

FRED J. SHOEMAKER
Judge

Entry cc:

Robert Davis
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Plaintiff, Pro se

Douglas R. Folkert
Assistant Attorney General

Attorney for Defendant

Case No. 2003-11399

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ENTRY

150 East Gay Street, 23rd Floor
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LH/cmd

Filed July 8, 2004

To S.C. reporter July 19, 2004