

[Cite as *Wasilewski v. Ohio Dept. of Transp.*, 2004-Ohio-7326.]

IN THE COURT OF CLAIMS OF OHIO

STEVE WASILEWSKI :
Plaintiff :
v. : CASE NO. 2004-03560-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
TRANSPORTATION :
Defendant :
: : : : : : : : : : : : : : : : :

{¶ 1} During the summer of 2003, defendant, Department of Transportation (DOT), began a construction project on State Route 304 in Trumbull County. This construction project included work to replace and upsize drainage pipe along the portion of State Route 304 which ran through Hubbard Township. Seemingly, the intent of this DOT project was to improve any drainage problems from rainwater run-off affecting State Route 304 and homeowners residing adjacent to the roadway.

{¶ 2} Plaintiff, Steve Wasilewski, who owns a residence in Hubbard, Ohio near State Route 304, stated that after the DOT drainage project was completed the footer drains to his home backed up causing flooding in his basement. Plaintiff claimed his storm sewers had been connected to the DOT roadway drainage system prior to the 2003 drainage improvement project on State Route 304. However, according to plaintiff, defendant's personnel failed to reattach his drain pipe to the improved roadway drainage system thereby causing problems in his home. After experiencing the drainage problems, plaintiff in December, 2003, hired C & C Drain, a professional sewer and drain service company, "to clear the drain

. . . with some type of high pressure machine." Plaintiff related that personnel from C & C Sewer & Drain confirmed his drain had not been reconnected to the DOT roadway drainage system. Plaintiff maintained he informed DOT about his drain not being reconnected but was told, "everything was reconnected and I had some kind of blockage, cave in, broken tile," or some other problem. Plaintiff again hired C & C Sewer & Drain to locate his drain blockage and also engaged a contractor to dig up his drain. Plaintiff professed this additional work he had performed reconfirmed his drain was not reconnected to the DOT drainage system. Consequently, plaintiff filed this complaint seeking to recover \$625.80¹ the cost of work performed by C & C Sewer & Drain and work performed by a contractor on plaintiff's drain line. Plaintiff has suggested defendant should bear responsibility for these work costs because his drain was not reconnected by DOT after drainage work was completed on State Route 304.

{¶ 3} Defendant denied any liability in this matter. Defendant stated plaintiff's, "drainage problem, was caused by extremely old and inadequate drainage; that his flooding occurred for years prior to the project; and that he failed to contact ODOT when the new sewer system was being installed so that it could be determined, at the time the construction project was ongoing in front of his home, whether his drain was both in existence and available for re-attachment to the new system." Essentially defendant contended any expenses plaintiff incurred were not related to any act or omission by DOT in connection with the drainage improvement project on State Route 304.

{¶ 4} Defendant submitted a statement from DOT employee Ted Baker, Maintenance Area Engineer, who related he had previous

¹ The filing fee was paid.

contact with plaintiff regarding his drainage problems. Baker stated he had discussions in 2001 with plaintiff about his basement being flooded during periods of heavy rainfall. Baker further stated his 2001 meeting with plaintiff included talks about DOT's 2003 scheduled drainage improvement project for State Route 304. Baker recalled talking with plaintiff several times about the drainage improvement project which finally began in the summer of 2003. Baker explained that because plaintiff's residence was located within the city of Hubbard and outside DOT jurisdiction, the only drainage improvement work planned in the vicinity of plaintiff's home, "was to replace an existing catch basin to the west of his driveway and to place a new catch basin at the east end of his driveway." According to Baker, the newly installed catch basins were to be linked into an existing 12" diameter concrete pipe. Baker related he received a phone call from plaintiff's wife after the catch basins were installed. Baker recollected plaintiff's wife informed him, "that the pipe between the catch basins was not going to be replaced and that there were separations in the pipe," which were thought by plaintiff's wife to be the cause of the drainage problems in plaintiff's residence. After receiving this phone call, Baker noted he contacted a DOT supervisor and requested new pipe connecting the new catch basins be installed. This new pipe was added pursuant to Baker's instructions.

{¶ 5} After the completion of the State Route 304 drainage improvement, Baker recalled he received a telephone call from plaintiff complaining of flooding in his basement during periods of heavy rainfall. A few months later, Baker noted he received another call from plaintiff about his basement flooding. Furthermore, Baker related he was told plaintiff had hired a contractor to clean out his basement drain and the contractor

discovered plaintiff's drain was not connected to the new storm pipe installed by DOT in the summer of 2003. Upon receiving this information, Baker stated he talked with Ray Powell, the DOT project supervisor on the State Route 304 pipe installation. Baker maintained he was told by Powell that plaintiff's drainage pipe was not tied into the newly installed DOT storm sewer system because no drain pipe connection could be found leading from plaintiff's house to the old existing storm sewer. Essentially, according to information Baker received, plaintiff's drainage pipe could not be connected to DOT's newly installed sewer and pipe system due to the fact no one was able to locate plaintiff's drainage system connection. Baker suggested plaintiff's drainage connection pipe may have collapsed at some time before DOT initiated the 2003 roadway drainage project. Additionally, Baker stated plaintiff did not inform any DOT personnel where his drain pipe tied into the existing DOT system before any improvement work began. Baker declared property owners such as plaintiff have their drainage systems connected to DOT storm sewers as a courtesy and, "[g]enerally it is the property owner's responsibility to obtain the necessary permits and tie into the storm sewer."

{¶ 6} Defendant contended plaintiff failed to offer sufficient proof to establish any act or omission on the part of DOT caused any damage to plaintiff. Defendant asserted available evidence has shown plaintiff's flooding problems occurred several years prior to the 2003 drainage system improvement project. Defendant stated plaintiff was required to timely and properly locate his drainage pipe for reconnection to the newly installed DOT system. Defendant argued plaintiff's failure to inform DOT of the location of his drainage pipe while work was being performed was the sole proximate

{¶ 7} cause of any damage sustained. Plaintiff did not respond to any arguments offered by defendant. Plaintiff did not produce

any additional evidence after filing his complaint.

{¶ 8} Plaintiff presented his cause of action under a theory of negligence. In order for plaintiff to prevail upon such claim, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. DOT voluntarily assumed the duty to reconnect plaintiff's drainage pipe to the newly installed storm sewer. However, plaintiff's drainage pipe could not be located and plaintiff himself took no action to locate the pipe until several months after the completion of DOT's project. Plaintiff has failed to prove DOT's inability to locate his drain pipe was a breach of a voluntarily assumed duty constituting actionable negligence which proximately resulted in any subsequent damages claimed. Consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

STEVE WASILEWSKI	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03560-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/laa
11/9
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