

[Cite as *Ryan v. Ohio Dept. of Transp.*, 2004-Ohio-900.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL E. RYAN	:	
Plaintiff	:	
v.	:	CASE NO. 2003-09297-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

{¶1} Plaintiff, Daniel E. Ryan, is the owner of a home in Perrysburg, Ohio located adjacent to State Route 65 in Wood County. Construction of a new bridge on State Route 65 near plaintiff’s residence began in June 2001, with work completed in July 2003. The bridge connects the cities of Perrysburg and Maumee. According to defendant, Department of Transportation (DOT), an entity identified as Mosser Group was charged with the responsibility of building the new bridge and maintaining the construction work zone near plaintiff’s residence.

{¶2} Plaintiff related, “on November 14 or 15, 2002, we experienced violent shaking in our residence which was caused by ODOT crew using some kind of pile driving equipment driving steel work into the ground at my neighbor’s two houses away, to reinforce a retaining wall along the new bridge right of way.” Plaintiff claimed the pile driving activity on November 14 and November 15, caused damage to the foundation of his house. Alternatively, and additionally, plaintiff suggested some damage to this home’s foundation was caused by blasting work done at the time the new bridge on State Route 65 was being constructed. Plaintiff asserted all foundation damage to his house was caused by the bridge construction activity. Although the cost of repairing his home is in excess of

\$4,000.00, plaintiff filed this complaint seeking to recover \$2,500.00, the maximum damage amount recoverable under R.C. 2743.10. Plaintiff has alleged the damage to his property was proximately caused by construction operations under the control of DOT and, consequently, DOT should bear responsibility for all repair costs claimed.

{¶3} Defendant acknowledged plaintiff's residence has structural problems including a number of cracks in the foundation. However, defendant denied any damage to plaintiff's home was caused by an activity associated with bridge construction between June, 2001 and July, 2003. Defendant explained DOT and the Mosser Group exercised precautions when pile driving and conducting blasting operations. On October 6, 2002, a vibration study was conducted to monitor the blast when the existing bridge linking Perrysburg and Maumee was imploded. The blasting of the existing bridge produced ground vibrations within set limits to prevent structural damage to buildings close to the blast site. Based on the conclusions from the vibration study, defendant has contended plaintiff failed to produce sufficient evidence to establish the structural damage to his home was caused by blasting associated with the demolition of the Maumee-Perrysburg bridge on October 6, 2002. According to the vibration study, the blasting on October 6, 2002 did not produce enough seismic activity to threaten plaintiff's property.

{¶4} Concomitantly, defendant has asserted plaintiff has not shown the damage to his home was caused by pile driving conducted in November, 2002. Defendant represented the structural damage to plaintiff's residence as being "normal and minor foundation cracking due to five decades of settling." Defendant related plaintiff's home is "built on a steep incline and appears to be sliding downwards." Defendant submitted several photographs of plaintiff's residence depicting cracks in the foundation. Defendant maintained the cause of the fissures cannot and have not been attributed to any pile driving activity performed in November 2002.

{¶5} Plaintiff insisted the damage to the foundation of his residence was caused by the bridge construction operation. However, plaintiff has not presented any evidence other than his own assertion to prove his property was damaged as a proximate result of activity under the control of DOT. As a necessary element of his claim, plaintiff was

required to prove proximate cause of his damage by a preponderance of the evidence. See, e.g. *Stinson v. England* (1994), 69 Ohio St. 3d 451. In a situation such as the instant claim, plaintiff is required to produce expert testimony regarding the issue of causation and that testimony must be expressed in terms of probability. *Id.* at 454. Plaintiff, by not supplying the requisite to state a prima facie claim has failed to meet his burden of proof. Therefore, plaintiff's claim is denied.

{¶6} 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:

Daniel E. Ryan
613 West Front Street
Perrysburg, Ohio 43551

Plaintiff, Pro se

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

For Defendant

RDK/laa
2/2
Filed 2/13/04
Sent to S.C. reporter 2/27/04