

[Cite as *Rannells v. Ohio Dept. of Transp.* , 2005-Ohio-5386.]

IN THE COURT OF CLAIMS OF OHIO

THOMAS VANCE RANNELLS :
Plaintiff :
v. : CASE NO. 2005-05558-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

: : : : : : : : : : : : : : : :

{¶ 1} Plaintiff, Thomas V. Rannells, is the owner of land adjacent to State Route 328 in Vinton County. On April 1, 2005, plaintiff stated defendant, Department of Transportation ("DOT"), was conducting roadway maintenance operations on State Route 328 near plaintiff's land. Plaintiff stated DOT crews in the course of roadway maintenance work, "used a backhoe and crushed the end of [a] culvert resulting in the flooding of approx[imately] 5 (five) acres of my land." Plaintiff explained the flooded land contained newly planted and growing cypress trees. Plaintiff related the flood site was inspected on April 11, 2005, by Mark Rickey, identified as a Service Forester employed by the Ohio Department of Natural Resources. According to plaintiff, Mr. Rickey told him at the time of inspection that the flooding waters would probably kill most of the recently planted cypress trees (planted 2000) and some of the more mature growing trees (planted 1992-1993). Plaintiff professed the land area where cypress trees were planted had been continuously under water for at least two weeks in April, 2005.

{¶ 2} Furthermore, plaintiff recalled he had a conversation on or about April 5, 2005, regarding the roadway maintenance and

subsequent land flooding with DOT employee Dana Peters. Peters, identified as a local superintendent, apparently notified plaintiff that DOT could not or would not work on the damaged culvert spanning State Route 328 until hot mix asphalt repair material was available. Plaintiff recollected Peters remarked that flooding on and around State Route 328 was a minor problem due to limited traffic use of the roadway. Plaintiff asserted Peters refused to authorize any timely attempts to repair or fix any problem with the culvert thereby inhibiting flood waters.

{¶ 3} Plaintiff submitted photographs of the section of State Route 328 where his land is abutting and adjacent to the roadway. These photographs depict a paved two lane highway with one lane partially flooded and large areas of flood water encroaching onto timbered forested land adjacent to the roadway. The flooded land is located in a valley amid surrounding elevated regions. Flood water appears to be confined to one roadway lane and a section of plaintiff's land.

{¶ 4} Plaintiff filed this complaint seeking to recover \$1,325.00, the cost of five hundred new cypress tree seedlings, labor expenses to plant the trees, and "damages to previously planted trees." Plaintiff has contended his trees have been permanently damaged as a proximate cause of negligence on the part of DOT in conducting roadway maintenance. Plaintiff insisted defendant's personnel damaged a culvert and refused to timely repair the damage which resulted in flood waters encroaching onto his land and contributed or will contribute to the death of the planted timber trees. The \$25.00 filing fee was paid.

{¶ 5} Defendant acknowledged a DOT maintenance crew used equipment, including a backhoe, to remove debris from an already flooded area around a culvert spanning State Route 328. Defendant further acknowledged debris was removed from around both ends of

the culvert adjacent to plaintiff's land. However, defendant denied any activity of DOT personnel "crushed" the culvert or inhibited water flow through the culvert causing flooding on plaintiff's land. In fact, defendant attributed the cause of the water accumulation on plaintiff's land to natural dams created by beavers. One such natural beaver dam was, according to defendant, partially built inside the corrugated metal culvert spanning State Route 328. Defendant asserted the presence of a beaver dam inside the culvert was unknown prior to April 1, 2005, although DOT personnel previously knew about other beaver dams at the location and removed debris from around the culvert caused by these dams on November 12, 2004, January 11, 2005, and March 31, 2005.

{¶ 6} Defendant explained a decision was made to replace a portion of the metal culvert with plastic pipe in an attempt to deter beaver dam construction inside the culvert. Defendant denied the culvert replacement project was a remedial measure taken to repair any alleged damage done by DOT crews on April 1, 2005. Work on the culvert replacement installation began on April 18, 2005 (the day plaintiff filed this complaint) and was completed the next day. However, defendant noted, after the culvert work was completed, "the beavers have built a new dam upstream from the inlet of the culvert, and beyond (DOT'S) right-of-way." Defendant submitted a photograph of this natural dam (taken May 2, 2005).

{¶ 7} Furthermore, DOT employee, Dana Peters, related this particular area of State Route 328 around plaintiff's land, "floods periodically from Raccoon Creek back water during highwater time," presumably without any dam building instances from area wildlife. Defendant submitted photographs (dated April 25, 2005), depicting the flooding problems of Raccoon Creek and the water back-up onto the paved portion of State Route 328. Defendant stated this "drainage problem (with Raccoon Creek) goes beyond the limitations

of ODOT's right-of-way." Therefore, defendant seemingly asserted DOT should not be charged with a duty to attempt flood control measures on a waterway flood located beyond the DOT right-of-way. Defendant contended no DOT act or omission contributed to the flooding of plaintiff's land and any damage to plaintiff's trees. Defendant maintained the "flooding problem is a manifestation of the low-lying area (of plaintiff's land) and the activity of beavers." Consequently, defendant argued DOT cannot be held liable for damage proximately caused by wildlife and the volitional act of plaintiff to plant in a land area prone to flooding.

{¶ 8} In his response to defendant's investigation report, plaintiff insisted his land was flooded and his trees were destroyed due to a blocked culvert spanning State Route 328. Plaintiff explained he was told by an unidentified DOT employee who worked on the culvert replacement project that the original culvert spanning the roadway had been partially crushed by a backhoe, thereby making the surrounding area prone to flooding. Plaintiff stated the original culvert was blocked on several occasions prior to April, 2005. Plaintiff further stated he personally shoveled out material which had blocked the culvert. Plaintiff asserted he was unable to shovel out any blockages from the culvert after it was "crushed." Plaintiff did not present additional evidence to establish activity on the part of DOT personnel "crushed" the culvert resulting in flooding of plaintiff's land and consequential damage to plaintiff's trees.

{¶ 9} Plaintiff did submit a hand written statement signed by three local residents identified as Paul E. Thompson, Larry Thompson, and Ronnie Stewart. This statement related: "I have read the response of Thomas Vance Runnels case #2005-05558-AD and find it to be true and factual. The culvert flooding existed for over 14 consecutive days. Their repair took a long time." This

statement is not persuasive to show DOT acts or omissions proximately caused damage to plaintiff's trees.

{¶ 10} Plaintiff again claimed his cypress trees were "destroyed" by flood waters present on his land for a two week period in April, 2005. Plaintiff stated the trees subjected to flooding had been "recently planted." Plaintiff's submitted evidence pointed out trees were planted on plaintiff's land in 1992, 1993, and 2000. Plaintiff did not provide evidence other than his own assertion to show his trees were "destroyed" by flooding.

{¶ 11} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723. Further, defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. When conducting these maintenance projects, defendant's personnel must operate equipment in a safe manner. *State Farm Mutual Automobile Ins. Company v. Department of Transportation* (1998), 97-11011-AD.

{¶ 12} For plaintiff to prevail on a claim of negligence, 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. Plaintiff has the burden of proving, by a

preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.

{¶ 13} Plaintiff alleged defendant's act in clearing debris from a culvert spanning State Route 328 damaged that culvert to such an extent flooding of adjacent land occurred. Plaintiff further alleged this prolonged flooding destroyed growing cypress trees planted on his land. Defendant, in turn, denied damaging the culvert while performing maintenance activity and denied any DOT maintenance activity led to flooding land area around State Route 328. As a necessary element of his particular 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. This court, as trier of fact, determines questions of proximate causation. *Schinaver v. Szymanski* (1984), 14 Ohio St. 3d 51.

{¶ 14} "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, at 160 quoting *Mudrich v. Std. Oil Co.* (1950), 153 Ohio St. 31. In

the instant claim, plaintiff failed to produce sufficient evidence to prove his land was flooded as a result of any negligent act on the part of DOT personnel. Furthermore, plaintiff failed to prove his trees were destroyed as a result of any act or omission on the part of defendant.

IN THE COURT OF CLAIMS OF OHIO

THOMAS VANCE RANNELLS :
Plaintiff :
v. : CASE NO. 2005-05558-AD
OHIO DEPT. OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

: : : : : : : : : : : : : : : :

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:

Thomas Vance Rannells
27172 Route 328
New Plymouth, Ohio 45654

Plaintiff, Pro se

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

For Defendant

DRB/RDK/1aa
9/7
Filed 9/22/05
Sent to S.C. reporter 10/11/05