

[Cite as *Sherman v. Ohio Dept. of Transp.*, 2006-Ohio-5665.]

IN THE COURT OF CLAIMS OF OHIO

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JOHN SHERMAN

:

Plaintiff

:

CASE NO. 2005-09863

Judge J. Craig Wright

v.

:

OHIO DEPT. OF TRANSPORTATION

:

ENTRY GRANTING DEFENDANT'S

MOTION FOR SUMMARY JUDGMENT

Defendant

:

: : : : : : : : : :

{¶ 1} On July 24, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. On September 1, 2006, the court conducted an oral hearing on the motion. Plaintiff participated in the hearing via telephone.

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

{¶ 3} “*** 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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff filed this action alleging that on September 12, 2005, the negligence of defendant, Ohio Department of Transportation (ODOT) ruined a concrete project on which

he was working. Specifically, plaintiff contends that ODOT's contract street sweeper, Barrett Paving Company (Barrett), spilled approximately 100 gallons of oily water over plaintiff's freshly poured concrete.

{¶ 5} Defendant contends that it was not responsible for the actions of Barrett's employee. In support of its motion, defendant attached an affidavit of Steve Thaman, the ODOT inspector who was present at the site on the date of the incident. According to the affidavit, Barrett was an independent contractor employed by ODOT to perform work on Project 8004-05 which was located at or near the vicinity where plaintiff was completing his concrete project. Thaman states in his affidavit that he was responsible for ensuring that Barrett's work was completed according to the specifications of Project 8004-05, but that the means and methods of completing the project were within the discretion of Barrett. Thaman further states that he did not instruct any employee of Barrett or ODOT to dump water into the roadway, that he did not observe any such conduct, and that Barrett did not inform him of any intention to dump water in the roadway.

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

{¶ 7} "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* (1996), 75 Ohio St.3d 280, 292. 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., et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶ 8} In light of its standard of review, the court finds that the only reasonable conclusion to be drawn from the material submitted herein is that ODOT had no responsibility for control over Barrett's employees and, thus, ODOT cannot be held liable to plaintiff. Consequently, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶ 9} For the foregoing reasons, and construing the evidence most strongly in plaintiff's favor, defendant's motion for summary judgment is 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.

J. CRAIG WRIGHT
Judge

cc:

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LH/cmd

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