

**IN THE COURT OF CLAIMS OF OHIO**

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TAMMY YOUNG, Admx.

Case No. 2003-05984

Judge J. Craig Wright

Plaintiff

DECISION

v.

THE UNIVERSITY OF AKRON

Defendant

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{¶ 1} On July 10, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On August 7, 2006, plaintiff filed a memorandum in opposition. On August 11, 2006, an oral hearing was held on defendant's motion for summary judgment.

{¶ 2} The case is now before the court for determination upon defendant's motion for summary judgment. See Civ.R. 56(C).

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

{¶ 4} “\*\*\* 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.

{¶ 5} In her complaint, plaintiff alleges that defendant and its employees were

negligent in allowing a taped electrical connection to be used during the installation of a replacement “switchgear,” an electrical device that regulates and protects the flow of electrical power. Plaintiff alleges that as a result of defendant’s negligence, plaintiff’s decedent, Douglas Young (Young), was electrocuted while working on the newly installed switchgear.

{¶ 6} The court previously determined that Guy Marrelli, an electrical engineer who was employed by defendant, was entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86. The court’s immunity determination was subsequently affirmed by the Tenth District Court of Appeals. *Young v. Univ. of Akron*, Franklin App. No. 04AP-318, 2004-Ohio-6720.

{¶ 7} Defendant’s motion for summary judgment asserts that it is entitled to discretionary immunity inasmuch as Marrelli exercised a high degree of independent judgment and discretion regarding the project plans. Defendant also argues that plaintiff’s claim should be barred because Young’s own negligence was greater than any negligence that might be attributed to defendant.

{¶ 8} In its opinion, the Tenth District Court of Appeals summarized the testimony and evidence presented at the immunity hearing as follows:

{¶ 9} “Sometime in 1998, Marrelli completed project drawings and specifications for the switchgear replacement and the project was bid. Pursuant to that bidding process, Thompson Electric (‘Thompson’) was awarded the project. On July 7, 1998, appellee entered into an ‘Agreement for Construction Services’ with Thompson to replace the existing oil switchgears. Appellee agreed to pay Thompson \$174,175 for the project (eventually, the total amount paid was \$188,775). Thompson agreed to provide all necessary materials to complete the project and to complete the project in accordance with Marrelli’s specifications. As part of those specifications, appellee required Thompson to notify it of any changes in the work with a written addendum or change order. Appellee also required Thompson to keep ‘as-built’ drawings, which would show the actual work performed where the work differed from the original project drawings. Thompson was to

record any approved changes on the as-built drawings. The specifications also prohibited Thompson from making any substitutions.

{¶ 10} “Switchgears include a structure known as a bushing which provides an insulated entrance into the switchgear for an energized conductor. The bushing also prevents energized conductors from coming into contact with each other and the switchgear itself. In essence, the bushing is the point of entry where a cable carrying electricity connects to the switchgear so that the switchgear can then transform the electricity and transport it to its intended destination. The switchgear involved in this case contained four rows of bushings with three bushings in each row. Marrelli’s project drawings specified that the new switchgears were to have 200 amp bushings. Marrelli’s specifications also required that the energized cables connect to the bushings with 200 amp load break elbows. Load break elbows provide an insulated high voltage connection for the energized cable to connect to the switchgear. Load break elbows allow the switchgear to be ‘dead front,’ meaning that the electrical cables are fully insulated and the switchgear can be disconnected or operated while energized (under load) assuming all other safety precautions are taken.

{¶ 11} “At some point, it was discovered that the switchgear Thompson purchased for the project contained 600 amp bushings rather than 200 amp bushings as required by the project specifications. Drawings approved by Marrelli show that he approved the switchgear’s 600 amp bushings even though they conflicted with his own specifications. This difference was significant because 200 amp load break elbows could not be used with 600 amp bushings without an adaptor. Because of that incompatibility, the 200 amp load break elbows required by Marrelli’s specifications could not be used to connect the electric cables to the switchgear.

{¶ 12} “Douglas Young (‘Young’) was a Thompson employee and was the foreman for this project. When it was discovered that the 200 amp load break elbows would not fit the specified switchgear, Young had a conversation with a sales representative from the

company who sold the switchgear, Haverstock & Bowers, and his boss, division manager William Anderson. Pursuant to that conversation, the decision was made to tape the switchgear connections with 130C 3M electrical tape. Thompson did not submit a change order for the new connections to Marrelli, nor did it make any as-built drawings of the new taped connections. Young and Anderson subsequently told Marrelli about the incompatibility of the bushings and the load break elbows and the need to tape the connections. Marrelli contends that he did not know about the taped connections until May 1999, when he made a final inspection of Thompson's work. Marrelli testified that he accepted the taped connections only after Thompson assured him that the connections were safe.

{¶ 13} “Shortly after his final inspection of the newly installed switchgear, around June 10, 1999, representatives from Haverstock & Bowers (a distributor) and the manufacturer of the switchgear visited [defendant's] campus and saw the switchgear's taped connections. The representatives from Haverstock & Bowers expressed concern about the taped connections. Bryan Miller, one of those representatives, allegedly tried to call Marrelli on the phone and left several messages on Marrelli's voicemail. When Marrelli did not return his calls, Miller contends he wrote Marrelli a letter to express his concerns about the taped connections and to make sure that Marrelli knew the taped connections did not make the switchgear ‘dead front’ like a load break elbow would. Marrelli did not recall receiving this letter and Miller did not recall hearing from Marrelli after Miller sent this letter.

{¶ 14} “Almost two years later, on May 16, 2001, Young was working on the newly installed switchgear on [defendant's] campus. The switchgear was energized, meaning that electricity was flowing from the electric cables into the switchgear. While he was working on the switchgear, Young was electrocuted and died.” Id. ¶3-8.

{¶ 15} With regard to the issue of discretionary immunity, the Supreme Court of Ohio has held that “\*\*\* [t]he state cannot be sued for \*\*\* the exercise of an executive or

planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion. \*\*\*\*” *Reynolds v. State* (1984), 14 Ohio St.3d 68, paragraph one of the syllabus; *Wallace v. Ohio Dept. of Commerce*, 96 Ohio St.3d 266, 2002-Ohio-4210. The court must examine the role of a state agency in making a determination whether immunity is extended a particular decision or function. *Garland v. Ohio Dept. of Transp.* (1990), 48 Ohio St.3d 10 (finding that the state agency was immune from liability on the decision as to what type of traffic control device to install).

{¶ 16} In this case, the testimony and evidence established that Marrelli was responsible for the project drawings, specifications, and any modifications to the initial project design. Indeed, the fact that Marrelli had the authority to approve subsequent changes to the project design shows that he was exercising his independent engineering judgment. The court finds that Marrelli’s decisions regarding both the acceptance of the taped connections and the approval of the project drawings and specifications required a high degree of independent judgment and discretion. Consequently, defendant is protected from liability arising from those decisions under the doctrine of discretionary immunity.

{¶ 17} Having determined that defendant is entitled to discretionary immunity, the court finds that the issues of comparative negligence and proximate cause are moot.

{¶ 18} In short, pursuant to Civ.R. 56(C), and construing the evidence most strongly in favor of plaintiff, the court concludes that defendant is entitled to judgment as a matter of law. Therefore, defendant’s motion for summary judgment shall be granted.

[Cite as *Young v. Univ. of Akron*, 2006-Ohio-5671.]

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THE UNIVERSITY OF AKRON

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Judge J. Craig Wright

JUDGMENT ENTRY

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An oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED. 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.

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J. CRAIG WRIGHT  
Judge

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