[Cite as *Barksdale v. Columbus State Community College*, 2007-Ohio-1269.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

REUEL BARKSDALE

Plaintiff

v.

COLUMBUS STATE COMMUNITY COLLEGE

Defendant

Case No. 2006-05829-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶1} On February 23, 2006, an automobile owned by plaintiff, Reuel Barksdale, was damaged while at a parking lot owned and operated by defendant, Columbus State Community College ("CSCC"). Specifically, plaintiff stated his car was damaged when, "[a] handicapped sign which was mounted in a cement boot blew over due to moderately high winds and landed on my trunk." The property damage incident was investigated by the CSCC Police Department and a report was filed. The reporting Police Officer, Greg Capers, recorded, "severe crosswinds" as the weather conditions that existed on the day of plaintiff's property damage event. Furthermore, Capers noted that he was driving through CSCC Parking Lot 2E at about 3:30 p.m. on February 23, 2006, when he discovered the handicap sign designating a handicapped parking space, "had blown over from the high winds and struck [plaintiff's] car." It is therefore undisputed the damage-causing sign struck plaintiff's vehicle as a result of wind conditions. Neither plaintiff nor defendant submitted any evidence of approximate wind speed occurring in the Columbus, Ohio area on February 23, 2006.

{¶2} Plaintiff suggests that his property damage was proximately caused by negligence on the part of defendant in maintaining a hazardous condition (the handicap parking sign) on the CSCC parking lot. Plaintiff filed this complaint seeking to recover $396.16, as the total cost of automotive repair required to restore his car's condition after the February 23, 2006, incident. The filing fee was paid.

{¶3} Liability for negligence is predicated upon injury caused by the failure to discharge a duty wed to the injured party. *Moncol v. Bd. of Education* (1978), 55 Ohio St. 2d 72. Therefore, to prevail in an action founded upon negligence, plaintiff must demonstrate:

{¶4} 1) that defendant had a duty, recognized by law, requiring conformance of conduct to a certain standard for the protection of plaintiff;

{¶5} 2) that the defendant failed to conform its conduct to that standard; and

{¶6} 3) that the defendant's conduct proximately caused the plaintiff to sustain actual loss or damage.

{¶7} In the instant claim, evidence available supports the position that damage was caused solely by high winds; that is, by an "Act of God." Plaintiff did not provide evidence his damage was the result of any negligence attributable to defendant.

{¶8} It is well-settled Ohio law that if an Act of God is so "unusual and

overwhelming as to do damage by its own power, without reference to and independently of negligence by defendant, there is no liability." *Piqua v. Morris* (1918), 98 Ohio St. 42, 49. "The term 'Act of God' in its legal significance, means any irresistible disaster, the result of natural causes, such as earthquakes, violent storms, lightning and unprecedented floods." id. at 47-48. "An Act of God must proceed from the violence of nature or the force of the elements alone and the agency of man must have had nothing to do with it." *GTR Land Co. v. Wilson Cabinet Co.*, 1998 Ohio App. LEXIS 5393*13 (Dec. 30, 1988), Holmes App. No. CA-386, unreported, quoting 1 O. Jur. 2d, Act of God at 2.

{¶9} However, in a situation where two causes contribute to an injury, one cause which is defendant's negligence and the other cause an Act of God, liability shall attach to defendant if plaintiff's damage would not have happened but for defendant's negligence. *Nationwide Ins. Co. v. Jordan* (1994), 64 Ohio Misc. 2d 30. If proper care and diligence on the part of defendant would have avoided the act, it is not excusable as an Act of God. *Bier v. City of New Philadelphia* (1984), 11 Ohio St. 3d 134.

{¶10} 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 fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, the court concludes that insufficient evidence has been presented to show defendant breached a duty of care owed to plaintiff and that such breach proximately caused plaintiff's damage. Plaintiff has not produced any evidence to establish his property damage was caused by any event other than an Act of God.

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ENTRY OF ADMINISTRATIVE 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.

_____
MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa
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