

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

PAUL LAURENZI

Case No. 2005-08930

Plaintiff

Judge J. Craig Wright

v.

DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

{¶1} On July 19, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On August 16, 2006, plaintiff filed a “motion to refuse” defendant’s motion, which the court construes as plaintiff’s memorandum contra. On August 29, 2006, the court issued an entry that both granted the parties leave to file supplemental briefs and continued the August 17, 2006, oral hearing to October 23, 2006, to allow the parties to conduct additional discovery. On October 23, 2006, an oral hearing was held on defendant’s motion for summary judgment.

{¶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

Case No. 2005-08930	- 2 -	DECISION
---------------------	-------	----------

Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} On September 3, 2003, plaintiff was injured when the motorcycle he was operating struck a curb on the left edge of an entrance ramp to southbound State Route 237 and Interstate 480 in Cleveland, Ohio. Plaintiff alleges that defendant was negligent in designing, constructing, and maintaining the ramp and that defendant's negligence proximately caused his injuries. According to plaintiff, the ramp was constructed as part of a federally funded highway project and, consequently, defendant had a duty to maintain the ramp pursuant to Section 116, Title 23, U.S.Code.

{¶5} Defendant asserts that it designed and constructed the ramp according to engineering standards that were in effect at the time of the construction and that it had no duty to reconstruct the ramp. Defendant also contends that the city of Cleveland was responsible for maintaining the ramp.

{¶6} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Defendant has a general duty to maintain its highways in a reasonably safe condition. *Knickel v. Ohio Dept. of Transp.* (1976), 49 Ohio App.2d 335. However, defendant is not an insurer of the safety of its highways. See *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App.3d 723.

{¶7} Defendant's motion for summary judgment is accompanied by an affidavit of Thomas Tomansheski, an accident investigator, who states that he has observed city of Cleveland maintenance crews paving the ramp, and that representatives from the city maintenance department have informed him that the city maintains the ramp. Additionally, Tomansheski attached to his affidavit a letter that was signed by the public information

Case No. 2005-08930	- 3 -	DECISION
---------------------	-------	----------

officer for the city of Cleveland that acknowledges that the roadway at issue “is a City of Cleveland street.”

{¶8} Defendant also submitted an affidavit of Dirk Gross, defendant’s Administrator of the Office of Roadway Engineering. In his affidavit, Gross states that the construction plans were in compliance with the standards that were in effect at the time the ramp was built. Gross also stated that his review of defendant’s records revealed that defendant has neither redesigned nor reconstructed the entrance ramp. According to Gross, defendant has not maintained the ramp and the city of Cleveland has “solely and exclusively performed” all such maintenance.

{¶9} In his supplemental memorandum, plaintiff concedes that the city of Cleveland “has been conclusively proven to maintain the road where the subject accident occurred”; however, plaintiff asserts that defendant also had a duty to maintain the road inasmuch as it was part of the “federal-aid” highway system. Specifically, plaintiff asserts that pursuant to Section 116, Title 23, U.S.Code, defendant had a “non-transferable duty” to reconstruct the ramp and remove the curb.

{¶10} Section 116, Title 23, U.S.Code provides, in relevant part:

{¶11} “(a) It shall be the duty of the State transportation department to *maintain, or cause to be maintained*, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State’s obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system.

{¶12} “(b) In any State wherein the State transportation department is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such highway department shall enter into a formal agreement for its maintenance with the appropriate officials of the county or municipality in which such project is located. ***” (Emphasis added.)

Case No. 2005-08930	- 4 -	DECISION
---------------------	-------	----------

{¶13} Plaintiff’s memorandum contra is accompanied by an affidavit of Douglas Head, a licensed professional engineer who worked for the Federal Highway Administration (FHIA) in the 1980s. In his affidavit, Head states that defendant had a duty to maintain Ohio federal-aid highways and that he “informally” monitored defendant’s maintenance of such highways. Head’s affidavit references a September 11, 1978, letter from the FHIA that was sent to defendant’s director. The letter addresses the removal of entrance ramp curbs and directs that “[a]ll Federal-aid projects that include these existing curbs, should also include their removal.” However, the letter also states that an “exception to this policy” exists for certain projects.

{¶14} Contrary to plaintiff’s assertion, the court finds that the September 11, 1978, letter from the FHIA which is attached to Head’s affidavit does not establish that defendant had a duty either to reconstruct or to remove all highway ramp curbs. Rather, the FHIA letter states that curb removal was not required on certain “specialty projects where the scope of the project does not normally include the type of construction items associated with curb removal.”

{¶15} Even assuming that defendant had a duty to maintain the ramp, absent any evidence that defendant had a duty to redesign or reconstruct the ramp, plaintiff cannot prevail. The Tenth District Court of Appeals has observed that “[a] duty to maintain state highways is distinguishable from a duty to redesign or reconstruct. Maintenance involves only the preservation of existing highway facilities, rather than the initiation of substantial improvements. *** ODOT has no duty to upgrade highways to current design standards when acting in the course of maintenance.” *Wiebelt v. Ohio Dept. of Transp.* (June 24, 1993), Franklin App. No. 93AP-117, citing *Lunar v. Ohio Dept. of Transp.* (1989), 61 Ohio App.3d 143, 149.

{¶16} Plaintiff has not presented any evidence to show that substantial improvements have been made to the ramp since it was constructed. Indeed, Gross

Case No. 2005-08930	- 5 -	DECISION
---------------------	-------	----------

stated that his review of defendant's records revealed that defendant has neither redesigned nor reconstructed the entrance ramp.

{¶17} "The existence of a duty in a negligence action is a question of law for the court to determine." *Mussivand v. David* (1989), 45 Ohio St.3d 314, 318, citing *Railroad Co. v. Harvey* (1907), 77 Ohio St. 235, 240. Based upon the evidentiary materials submitted, the court finds that defendant had no duty to redesign or reconstruct the ramp at issue. Additionally, the court finds that Section 116, Title 23, U.S.Code does not impose a duty upon defendant to remove or reconstruct the ramp.

{¶18} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence is that defendant did not have a duty to remove or reconstruct the ramp. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law.



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

PAUL LAURENZI

Case No. 2005-08930

Plaintiff

Judge J. Craig Wright

v.

JUDGMENT ENTRY

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

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 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:

Jeffrey H. Friedman
1370 Ontario Street, 6th Floor
Cleveland, Ohio 44113-1707

Robert W. Kerpsack Jr.
21 East State Street, Suite 300
Columbus, Ohio 43215

John P. Reichley
Peter E. DeMarco

Assistant Attorneys General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130

AMR/cmd

Filed January 12, 2007
To S.C. reporter March 6, 2007