

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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www.cco.state.oh.us

DALE SPANGENBERG

Case No. 2008-02151-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

ENTRY OF DISMISSAL

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

{¶ 1} On February 11, 2008, plaintiff, Encompass Indemnity, as subrogee of Dale Spangenberg, filed a complaint against defendant, Department of Transportation. Plaintiff alleges that it compensated its insured, Dale Spangenberg, for damages to his vehicle in the amount of \$631.97 and became subrogated to that amount. Plaintiff alleges the subrogated damages were incurred as the result of negligence on the part of the defendant.

{¶ 2} On March 21, 2008, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} “Defendant contends that Dale Spangenberg’s claim should be dismissed because Encompass Indemnity filed this claim on behalf of Dale Spangenberg and they lack standing to bring this claim against defendant since Encompass Indemnity is not entitled, as a matter of law, to bring this subrogation action. R.C. 2743.02(D) states, in pertinent part:

{¶ 4} “Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. ***

{¶ 5} “This statute makes is clear that a claimant’s award against the state shall be reduced by any benefit received from an insurance policy or other collateral source.

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As such, it follows that this statute prohibits an insurer from bringing a subrogation claim against the state. *Community Insurance Company v. Ohio Dept. of Transportation* (2001), 92 Ohio St. 3d 376.

{¶ 6} “Encompass Indemnity has asserted a subrogation claim against the defendant without Dale Spangenberg’s knowledge. By definition, a subrogee has only those rights its insured has. An insured cannot transfer a right of recovery which such insured does not have. *Grange Mut. Cas. Co. v. Columbus* (1989), 49 Ohio App. 3d 50. Under R.C. 2743.02(D), an insured has no right to recovery any amount such insured has received through insurance or other collateral sources. It follows then that the insurer has no subrogation right. *Chemtrol Adhesives, Inc. v. America Mfrs. Mut. Ins.* (1989), 42 Ohio St. 3d 40, paragraph one of the syllabus (an insurer-subrogee cannot succeed to acquire any right or remedy not possessed by its insured-subrogor).”

{¶ 7} R.C. 2743.02(D) in pertinent part states:

{¶ 8} “Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant . . .”

{¶ 9} The Ohio Supreme Court in *Community Insurance Company v. Ohio Dept. of Transportation*, 92 Ohio St. 3d 376, 378-379, 2001-Ohio-208, 750 N.E. 2d 573 stated:

{¶ 10} “We have previously recognized that the state’s purpose in waiving political subdivision immunity was twofold: to compensate uninsured victims while also preserving public resources. The ‘state can make the rational determination to permit recovery by an unprotected victim by deny subrogation to insurance carriers who can make actuarial computations and adjust premiums to compensate for payments to policyholders who suffer damage at the hands of a political subdivision.’ *Menefee v. Queen City Metro* (1990), 49 Ohio St. 3d 27, 29, 550 N.E. 2d 181, 183.

{¶ 11} “Even if it were appropriate in this case to inquire into legislative intent to resolve a statutory ambiguity, we find no support for concluding that the General Assembly intended that subrogation claims against the state should be treated

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differently from subrogation claims against political subdivisions. Nor do we believe that R.C. 2743.02(D) was intended to operate in such a way as to shift financial risk to the state and away from insurers, such as Community.

{¶ 12} “We therefore hold that an insurer who has been granted a right of subrogation by a person on whose behalf the insurer has paid medical expenses incurred as the result of tortious conduct of the state is subject to R.C. 2743.02(D), which mandates reduction in recoveries against the state by the ‘aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.’”

{¶ 13} Accordingly, in conjunction with the Supreme Court’s hold in *Community*, I find plaintiff has failed to state a cause of action against the defendant and, accordingly, defendant’s motion to dismiss is granted.

{¶ 14} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
6/4
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