[Cite as *Florence v. Bowling Green State Univ.*, 2008-Ohio-6004.]

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

ROGER C. FLORENCE II, et al.

Plaintiffs

v.

BOWLING GREEN STATE UNIVERSITY

Defendant

Case No. 2007-07213-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiffs, Roger C. Florence II and Jennifer Florence, filed this action against Bowling Green State University ("BGSU"), alleging their 2007 Chevrolet Uplander van was damaged on August 15, 2007, by a BGSU employee operating lawn mowing equipment on defendant's campus grounds. A written description of the damage incident was provided in the complaint. Plaintiffs wrote, "Roger was driving her vehicle on Stadium Dr(ive) on BGSU Campus, a BGSU employee was mowing (and) a rock was kicked up (and) hit the side of his vehicle (and) put (a) hole in (the) side of (the) door." Plaintiffs requested damages in the amount of $458.59, the cost of a replacement door. The filing fee was paid.

{¶ 2} Within minutes of the August 15, 2007 damage occurrence, plaintiffs reported the incident to BGSU police. A copy of the incident report was filed with the complaint. In this incident report, BGSU police officer, Amanda Schmitt, recorded the facts of the damage event upon plaintiff's advisement. Schmitt noted the 2007 Chevrolet Upland was traveling on Stadium Drive on the BGSU campus and as the

vehicle passed a grounds crew employee mowing a lawn adjacent to the roadway a rock was expelled from the lawn mower striking the driver's side door of the passing van.

{¶ 3} Defendant denied any liability in this matter disputing the stated location of the property damage occurrence and denying any BGSU grounds crew employee was responsible for any damage to the 2007 Chevrolet Uplander. Defendant explained a BGSU representative conducted a telephone interview with plaintiff, Roger Florence II on October 2, 2007 and Florence II recalled he had been traveling on Wooster Street on the BGSU campus when his van was struck by the propelled rock and he pulled into a McDonalds restaurant parking lot immediately after the incident. Defendant offered that Stadium Drive where plaintiffs originally stated the damage event occurred is not located in the vicinity of a McDonalds restaurant. Furthermore, defendant denied any BGSU grounds crew employees were mowing grass on campus grounds on either Wooster Street or Stadium Drive on August 15, 2007. Defendant stated "[u]pon inquiry of the University's Facilities Maintenance Department, the department of Recreational Sports and the Athletic Department, a check of the work assignment records for the day in question (8/15/07) indicated that no University personnel were assigned to mow grass in either of the areas specified by the Plaintiffs, Stadium Drive or Wooster Street near McDonalds restaurant." According to defendant "Wooster Street and Stadium Road are in two different areas of campus" and defendant observed it is unclear from plaintiffs inconsistent statements to determine the specific location of the August 15, 2007 damage event. Whether the damage incident occurred along Stadium Drive or Wooster Street, defendant denied any BGSU personnel were engaged in lawn mowing activities at these two separate locations on August 15, 2007.

{¶ 4} Defendant noted there are several student Residence Halls located on Wooster Street near a McDonalds restaurant and on August 15, 2007 these Residence Halls "were undergoing renovation and landscaping work by an independent contractor." Defendant denied having any knowledge what specific activities the independent contractor was involved in at the BGSU Residence Halls on Wooster Street on August 15, 2007. Defendant suggested employees of the independent contractor may have been mowing grass using a mower that propelled a rock into the path of plaintiff's passing vehicle. Defendant asserted that if plaintiffs' property damage

was caused by lawn mowing operations performed by an independent contractor then defendant as a matter of law can not be held liable for that damage.

{¶ 5} Defendant offered *Gore v. Ohio Dept. of Transp.*, Franklin App. No. 02AP-996, 2003-Ohio-1648, for the proposition that the state cannot be held liable for damage caused by an independent contractor engaged in lawn mowing activities. In *Gore*, the Tenth District Court of Appeals held the Ohio Department of Transportation could not be held liable for injuries caused by the negligent acts of a contractor hired to mow grass along the median of a state highway, Interstate 271. Defendant asserted the immunity from liability provided to the Ohio Department of Transportation in *Gore* should apply to BGSU under the purported circumstances presented in the instant action; damage caused by lawn mowing operations conducted on campus grounds by an independent contractor.

{¶ 6} Plaintiff, Roger Florence II filed a response pointing out the damage incident occurred as he was driving east on Wooster Street on BGSU campus. Plaintiffs again recalled their van was damaged by a rock thrown from a lawn mower cutting grass on defendant's property. Plaintiffs did not provide any evidence to establish the lawn mowing activity was conducted by BGSU personnel using BGSU equipment.

{¶ 7} After reviewing all evidence available, the trier of fact finds that in all probability the damage to plaintiffs' vehicle was caused by an independent contractor engaged in lawn mowing operations on BGSU grounds along Wooster Street. No evidence indicates BGSU personnel were connected with any lawn mowing on campus grounds on Wooster Street on August 15, 2007.

{¶ 8} As a general rule, although an employer may be liable for the negligent acts of an employee within the scope of their employment, one who engages an independent contractor is not liable for the negligent acts of the contractor or its employees. *Pusey v. Bator*, 94 Ohio St. 3d 275, 278, 2002-Ohio-795, 762 N.E. 2d 968. The distinction relates to the right to control the manner of performing the work, and if the manner or means of performing the work is left to one responsible to the employer for the result alone, an independent contractor relationship exists. *Pusey*, at 279.

{¶ 9} Ohio law indicates that a person or entity cannot assign activities which are inherently dangerous to a third party and automatically be free from responsibility for injuries caused when the inherently dangerous activity is conducted. See, e.g.,

Richman Bros. Co. v. Miller (1936), 131 Ohio St. 424, 6 O.O. 119, 3 N.E. 2d 360, and *Pusey*, at 279. An important question then becomes whether or not mowing a lawn on campus grounds is an inherently dangerous activity.

{¶ 10} "Work is inherently dangerous when it creates a peculiar risk of harm to others unless special precautions are taken." See *Covington & Cincinnati Bridge Co. v. Steinbrock & Patrick* (1899), 61 Ohio St. 215, 55 N.E. 618, paragraph one of the syllabus; 2 Restatement of the Law 2d, Torts, Section 427; *Prosser & Keeton* at 512-513, Section 71. "Under those circumstances, the employee hiring the independent contractor has a duty to see that the work is done with reasonable care and cannot, by hiring an independent contractor, insulate himself or herself from liability for injuries resulting to others from the negligence of the independent contractor or its employees. *Covington* at paragraph one of the syllabus . . .

{¶ 11} "The inherently-dangerous-work exception does apply, however, when special risks are associated with the work such that a reasonable man would recognize the necessity of taking special precautions. The work must create a risk that is not a normal, routine matter of customary human activity, such as driving an automobile, but is rather a special danger to those in the vicinity arising out of the particular situation created, and calling for special precautions. 2 Restatement of the Law 2d, Torts, at 385, Section 413, Comment b; *Prosser & Keeton* at 513-514, Section 71." *Gore,* Franklin App. No. 02AP-996, 2003-Ohio-1648 ¶ 20, ¶ 23, citing *Pusey*, 94 Ohio St. 3d 275, 279-280, 2002-Ohio-795, 762 N.E. 2d 968.

{¶ 12} Cutting grass under the circumstances conveyed is not an inherently dangerous activity. Therefore, this court holds defendant may delegate its duty of care in situations where an independent contractor chooses to engage in lawn mowing on BGSU grounds. Consequently, no liability for damages can attach to defendant for the negligent acts of an independent contractor performing lawn mowing operations. Defendant is not the proper party in this action.

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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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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