

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

VICTORIA L. SOBCZAK

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2004-08324

Judge Joseph T. Clark
Magistrate Holly True Shaver

JUDGMENT ENTRY

{¶ 1} On January 23, 2009, the magistrate issued a decision recommending that defendant's motion for summary judgment be granted. Pursuant to Civ.R. 53(D)(3)(b)(i), the court adopted the magistrate's decision on January 23, 2009.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states, in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." Plaintiff timely filed her objections. Defendant filed a response on February 17, 2009.

{¶ 3} Plaintiff alleged in her complaint that defendant, Ohio Department of Transportation (ODOT), negligently designed and constructed a highway entrance ramp, that the ramp was a known hazard, and that ODOT failed to make requested improvements to the ramp. The magistrate recommended that defendant's motion for summary judgment be granted in that ODOT initially designed and constructed the ramp

according to engineering standards which were in effect at the time of the construction and inasmuch as ODOT had no duty to reconstruct the ramp.

{¶ 4} Plaintiff's objections generally reiterate the arguments that were considered and rejected by the magistrate. Although plaintiff references *Burns v. Ohio Dept. of Transp.* (1987), 39 Ohio App.3d 126, as support for her position, the court notes that in *Burns*, ODOT had previously undertaken a major reconstruction of State Route 7 from a two-lane to a four-lane highway. The appellate court found that once ODOT made the decision to upgrade the highway, ODOT could be liable for negligent implementation of such decision.

{¶ 5} In the instant case, the entrance ramp was constructed in the 1950s. The magistrate concluded that ODOT had no statutory duty either to reconfigure the entrance or to reconstruct the highway upon request by the city of Sylvania. The magistrate further noted that 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. Maintenance involves only the preservation of existing highway facilities, rather than the initiation of substantial improvements. *Id.* See also *Galay v. Ohio Dept. of Transp.*, Franklin App. No. 05AP-383, 2006-Ohio- 4113, *Rahman v. Ohio Dept. of Transp.*, Franklin App. No. 05AP-439, 2006-Ohio-3013.

{¶ 6} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adheres to the judgment previously entered. See Civ.R. 53(D)(4)(i). 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.

JOSEPH T. CLARK
Judge

cc:

Daniel N. Abraham
536 South High Street
Columbus, Ohio 43215

Daniel R. Forsythe
William C. Becker
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

SJM/cmd
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