[Cite as *Carr v. Ohio Dept. of Transp., Dist. 10*, 2009-Ohio-3017.]

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
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MARY RACHEL CARR

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 10

Defendant

Case No. 2007-04753-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On January 17, 2007, employees of defendant, Department of Transportation ("DOT"), conducted a tree-trimming operation along the right-of-way of State Route 60 in Wyandot County, between mileposts 8.6 and 8.7. Plaintiff, Mary Rachel Carr, who lives in a house adjacent to State Route 60 asserted her microwave/range and computer were damaged on January 17, 2007 by a surge in the power line providing electricity to her residence. Plaintiff claimed the power surge was caused by the DOT tree-trimming crew. Plaintiff noted, "[a] tree was cut and fell across a power line causing a power surge and then a temporary loss of power." Furthermore, plaintiff related, "[t]he power fluctuation caused the power supply to my computer and my microwave/range hood to be ruined and have to be replaced." Plaintiff did not witness any DOT personnel trimming trees along State Route 60 and she did not witness any trimmed foliage contacting with a power line. Plaintiff contended the electrical damage to her computer and microwave/range was proximately caused by negligence on the part of DOT personnel in conducting the tree-trimming operation on January 17, 2007. Consequently, plaintiff filed this complaint seeking damages in the

amount of $477.44, the cost of repairing her electronic devices. The $25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 2} Defendant denied any liability in this matter asserting plaintiff has failed to produce sufficient evidence to establish the damage to her electronic devices was proximately caused by any negligent act or omission on the part of DOT personnel. Defendant acknowledged five DOT employees cleared brush on State Route 60 between mileposts 8.6 and 8.7 on January 17, 2007. Defendant also acknowledged a power surge occurred in the power lines servicing homes and businesses along State Route 60 in Lowell, Ohio on that same day. Apparently, representatives of the American Electric Power Co. ("AEP"), the electric service provider for the area, attributed the power surge to the five DOT employees conducting tree-trimming operations along State Route 60. DOT Washington County Manager, Jason Brownrigg, was notified of the claimed cause of the power by AEP representatives and he investigated the claim by contacting the five members of the DOT brush clearing crew. Defendant submitted a copy of Brownrigg's "Daily Log" for January 17, 2007, where he recorded his actions in regard to the power surge incident. In the entry for 3:15 p.m. - 3:30 p.m., Brownrigg noted: "Talked with Brush crew members, Hamble, King, Tabler, Arnett and D. Duff about AEP's claim they hit line with tree causing power surge, no one on crew had any knowledge of this happening." Defendant explained "[p]laintiff's claim is based solely on statements made from AEP" without any supporting evidence that the damage-causing power surge was attributable to the DOT tree-trimming activity.

{¶ 3} Defendant submitted a copy of an e-mail (dated February 13, 2007) from AEP representative Daniel R. Friend in reference to his opinion regarding the cause of the January 17, 2007 power surge at the AEP Lowell, Ohio substation. With the e-mail were attached photographs (copies submitted) depicting the overhead power lines along State Route 60 and the vicinity where the DOT crew conducted tree-trimming operations. Referencing one photograph Friend noted "[t]he overhead wire shows a small bend at the tree contact point but no burns or flash were evident." Defendant pointed out Daniel R. Friend did not witness a tree contact with the particular overhead power line and drew his conclusions from the photograph of the overhead power line. In the e-mail, Friend explained "[t]he breaker operation is very fast and cleared the line

immediately (therefore) (a) tree crew should have observed a [sic] immediate flash when the tree made contact and severe shaking of the overhead conductors." Defendant related the DOT employees "were performing their tree-branch trimming activities on the opposite side of the road from the power lines." Again, in referring to a submitted photograph of the power line, Friend observed, "[l]ine insulators on the poles to the left of the contact point, facing the river, were pulled toward the tree contact point." Despite this observed disruption of the power line and attachments, by some contact, Friend acknowledged AEP did not need to repair the line. Defendant countered Friend's reasoning about the source of the power surge stating: "[i]n order for a tree to have struck the lines facing the river or hit any of them hard enough to pull their insulators, the tree would have to do the following: 1) Cross the ditch on the west side of the road; 2) cross the road; and then 3) strike the line 20 feet in the air on the opposite side of the road."

{¶ 4} The submitted photographs generally support defendant's offered explanation in regard to the distance and direction a felled tree would have to cover in order to disrupt the AEP power line along State Route 60. Upon reviewing the submitted photographs the trier of fact finds it not outside the realm of probability that a tree cut by a DOT crew on January 17, 2007 fell completely across a roadway and contacted with an overhead power line suspended approximately twenty feet in the air.

{¶ 5} Defendant filed written statements from three crew members involved in the January 17, 2007 tree-trimming operation. The statements were written by Jonathan King, who cut the trees along State Route 60, Casey Hamble, and Dwight Duff. Defendant acknowledged the statements are in conflict in regard to the issue of whether or not a felled tree contacted with power lines. King indicated he cut some trees during the early afternoon of January 17, 2007 (the time of the power surge) stating "to the best of my knowledge and what I saw, none of them hit any power lines." Conversely, Hamble recorded the following observations: "[a]fter lunch there were a few trees we skipped over and went back to cut back to the tree line. In that patch of trees one was dropped and afterwards I saw a neutral wire moving side to side. I didn't see it touch another line or sparks fly." Furthermore, Dwight Duff in his statement noted he actually witnessed branches from one of the felled trees strike a power line. Duff stated he saw "the top branches hit the bottom line and it fliped [sic] up and rapped the

top line and made a cracking noise and a few sparks." Duff recalled he told his fellow crew members about the event he witnessed.

{¶ 6} Despite the evidence presented that there is some indication that a felled tree struck a power line along State Route 60, defendant has contended plaintiff has not offered sufficient evidence to prove DOT activity caused a power surge which resulted in the property damage claim. Defendant asserted plaintiff in a claim of this type is required to produce expert opinion testimony to prove causation. Defendant related, "[a]ccording to the 9th District Court of Appeals in *Salisbury v. Gordon Air Management Corp*., 2000 WL, 92087, January 19, 2000, unreported, unless a matter is within the comprehension of a layperson, expert testimony is indeed necessary. See Evid.R. 702 and 703. Experts have the knowledge, training and experience to enlighten the jury concerning the facts and their opinion regarding the facts. *McKay Machine Co. v. Rodman* (1967), 11 Ohio St.2d 77, 81." Defendant argued the issues asserted in the present claim require expert opinion testimony to establish causation and without such testimony plaintiff cannot prevail.

{¶ 7} In order for plaintiff to prevail upon her claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.,* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707. Plaintiff claimed her electrical devices were damaged by a power surge caused by DOT tree-trimming activity. As a necessary element of her particular claim, plaintiff was required to prove proximate cause of her damage by a preponderance of the evidence. See e.g., *Stinson v. England*, 69 Ohio St. 3d 451, 1994-Ohio-35, 633 N.E. 2d 532. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶ 8} "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay*

Co. (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327. In a situation such as the instant claim, expert testimony is required regarding the issue of causation and that testimony must be expressed in terms of probability. *Stinson*, at 454. The court finds the requisite testimony to prove causation has been provided by the submitted e-mail from AEP representative David Friend.[1] Friend expressed the opinion that defendant's tree-trimming operation caused the January 17, 2007 power surge Two DOT employees stated they saw movement in the power lines apparently caused by a felled tree branch contacting with the lines. The court concludes sufficient evidence has been presented to prove DOT tree-trimming activity caused a power surge that damaged plaintiff's property. Defendant is liable to plaintiff for damages in the amount of $477.44, plus the $25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

[1] In an administrative determination action governed by R.C. 2713.10 the rules of evidence are not applicable when qualifying an expert opinion. Specifically R.C. 2743.10(C) provides in pertinent part:

"Rules of evidence shall not be applicable in the determination. Procedures shall be governed by rules promulgated by the clerk, shall be informal, and shall be designed to accommodate persons who are not skilled in the law."

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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 plaintiff in the amount of $502.44, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Mary Rachel Carr
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Jolene M. Molitoris, Director
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RDK/laa
2/25
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