[Cite as *Billmaier v. Ohio Dept. of Transp.*, 2009-Ohio-3019.]

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

CRAIG BILLMAIER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-02223-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Craig Billmaier, is the owner of a residence in Perrysburg, Ohio, adjacent to State Route 65. Plaintiff related the basement in his home flooded with rain water on four separate occasions between May 2006 and January 2007. According to plaintiff, the flooding in his basement was due to a blocked and damaged storm sewer on the right of way of State Route 65 that was owned and maintained by the state. Plaintiff pointed out the water flooding his basement was "storm water and backed up through our basement floor drains." After his basement flooded in November 2006, plaintiff contacted Craig Godfrey of the Perrysburg Township to test their sewer lines to determine if the basement flooding was caused by a problem with the Township sewer lines. When plaintiff was informed the Township lines were clear and not a problem, he had his own sewer line running from his residence to the road (State Route 65) basin 'A' checked. Plaintiff explained when it was determined his lines worked properly, he contacted the local garage office of defendant, Department of Transportation ("DOT"), and requested DOT personnel test the DOT maintained line, "basin 'A' to (the) Maumee River." Plaintiff stated the DOT "crew came to the location in early March 2007 and

determined that basin 'B' to the river (part of the state sewer line) was plugged and had damaged tiles, preventing storm water from adequately discharging into the river." Plaintiff noted it took DOT employees two days to clear basin 'B' and the line to the Maumee River with the largest truck from the DOT local garage needed to clear the line. Plaintiff observed he has experienced no "sewer backup since" DOT cleared basin 'B' and the line to the river.

{¶ 2} Plaintiff contended the flooding in his basement was proximately caused by negligence on the part of defendant in failing to inspect and maintain the drain basin and sewer line along State Route 65. Consequently, plaintiff filed this complaint seeking recovery in the amount of $2,073.02 for repair to appliances in his basement that were water damaged, plus $150.00, the amount he paid to have his own sewer line tested. Plaintiff alleged defendant's negligence consisted of permitting basin 'B' and the downhill sewer line to the river to be blocked, which in turn caused storm water to back up at basin 'A' and into his basement where water damage occurred. Plaintiff submitted copies of bills for repairs made to the water damaged appliances stored in his basement. The filing fee was paid.

{¶ 3} Defendant denied any liability in this matter. Defendant seemingly acknowledged the flooding in plaintiff's basement was caused by problems with basin 'B' that resulted in water failing to drain properly. However, defendant denied plaintiff's flooding problems were proximately caused by any negligent act or omission on the part of DOT. Specifically, defendant denied liability based on the contention that no DOT personnel had any notice of the clogged and damaged basin 'B' until March 2007, two months after plaintiff last experienced flooding in his basement. Defendant cleared the problem with basin 'B' on March 15, 2007. Defendant explained DOT first learned of the flooding in plaintiff's basement when Craig Godfrey from Perry Township notified them after ascertaining sewer lines under the control of Perry Township were not contributing to plaintiff's flooding problems. Although plaintiff experienced flooding in his basement on four occasions between May 2006 and January 2007, he did not contact defendant at any time to determine if sewer lines under DOT control were causing the flooding. Defendant related DOT corrected the problem with basin 'B' "as soon as defendant, ODOT, knew of the problem." Defendant contended there was no way DOT could have known about the problem with basin 'B' and resulting water back up into

plaintiff's basement since there was no recorded water back up problem observed on State Route 65.

{¶ 4} Defendant submitted a copy of a DOT work order dated March 15, 2007 describing the job involved in clearing basin 'B'. Contained in the work order are notations indicating culverts were inspected. Defendant did not submit any evidence to show basin 'B' along State Route 65 was ever inspected for problems. There is no record that basin 'B' was inspected during the period from May 2006 to March 15, 2007. There is no record DOT provided routine maintenance for basin 'B' between May 2006 and March 15, 2007.

{¶ 5} Plaintiff filed a response stating, "I did not know of the existence of the state line and that I connected to it, and had no reason to believe the state (DOT) was not properly maintaining their lines." Plaintiff related he believed the initial two flood problems were isolated incidents due to "record-setting storms." Plaintiff noted when the flooding continued he tried to ascertain the cause of the problem and thought the Township was responsible or considered the fact his own line was clogged. Plaintiff acknowledged he did not contact DOT about the flood problem and it was the Township who notified DOT.

{¶ 6} Defendant must exercise due diligence in the maintenance and repair of highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance activities to protect property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transp.* (1992), 91-07526-AD. Defendant is also charged with the duty to inspect all roadway facilities on a routine basis and correct potential damaging conditions.

{¶ 7} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his 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 has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the

duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed. Plaintiff claimed his damage event was proximately caused by a failure to inspect and maintain roadway draining system on State Route 65. As a necessary element of this type of claim, plaintiff was required to prove proximate cause of his 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 the instant claim, the proximate cause of plaintiff's damage was defendant's failure to inspect and maintain the drainage system for State Route 65, particularly basin 'B'.

{¶ 9} Defendant argued DOT cannot be liable for plaintiff's damage due to lack of notice either actual or constructive of the problems with basin 'B'. Evidence has shown plaintiff first experienced flood problems in May 2006 and defendant cleared the cause of the flood problem on March 15, 2007. There is no evidence defendant ever inspected the cause of the flood problem, basin 'B', at any time prior to May 2006 or at any time in the interim between May 2006 and March 15, 2007. The trier of fact finds defendant had such constructive notice of the condition of basin 'B' to invoke liability for plaintiff's damages. Furthermore, proof of notice of a dangerous condition is not necessary when defendant's own agents cause such condition. *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus;

Sexton v. Ohio Department of Transportation (1996), 94-13861. Evidence indicates defendant's neglect caused the damage claimed.

{¶ 10} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 25 OBR 115, 495 N.E. 2d 462. Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31. Plaintiff has suffered damages in the amount of $2,233.02, 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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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 $2,258.02, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
2/19
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