

Court of Claims of Ohio  
The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
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DOLORES YONKINGS, Admr.

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-05790

Judge Patrick M. McGrath

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On July 18, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On August 22, 2013, plaintiff filed a response. On September 3, 2013, defendant filed a reply. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St. 3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff's claims arise from a fatal automobile accident that occurred on July 2, 2007, at the intersection of State Route 57 (S.R. 57) and Law Road in Lorain County, Ohio. Charles Yonkings, plaintiff's decedent, was traveling eastbound on Law Road. Yonkings entered the intersection without stopping because the stop sign on eastbound Law Road was down. Yonkings' vehicle was struck by a tractor-trailer traveling on S.R. 57; Yonkings' injuries were fatal.

{¶5} Plaintiff brings this action alleging that the Ohio Department of Transportation (ODOT) was negligent regarding the downed stop sign on Law Road and that such negligence was the proximate cause of the fatal accident. Plaintiff asserts that ODOT received notice of the downed stop sign through a telephone call from Lorain County Assistant Road Superintendent, Donald Piwinski, to ODOT's Oberlin garage. Plaintiff alleges that ODOT failed to timely repair or replace the downed stop sign.

{¶6} In addition to this case, plaintiff filed a complaint against Donald Piwinski, Grafton Township (Grafton), and Frank Raksi in the Lorain County Court of Common Pleas (*Yonkings I*). Grafton and Raksi filed a third-party complaint against ODOT. The filing of the third-party complaint coupled with the petition for removal resulted in removal of *Yonkings I* to the Court of Claims. See 2009-07156-PR. In *Yonkings I*, defendants motioned for summary judgment based on their immunity under R.C. Chapter 2744. The trial court denied their motions and defendants subsequently appealed. The Tenth District Court of Appeals determined that all defendants were entitled to immunity pursuant to R.C. Chapter 2744 and reversed the decision of the Court of Claims. *Yonkings v. Piwinski*, 10th Dist. Nos. 11AP-07, 11AP-09, 2011-Ohio-6232.

{¶7} Defendant has attached to its motion a copy of the decision of the Tenth District Court of Appeals in *Yonkings I*, which addressed immunity pursuant to R.C. Chapter 2744. Defendant argues that based upon *Yonkings I*, res judicata requires the

court to follow the finding of the Tenth District Court of Appeals that defendant did not have notice of the downed stop sign. Regarding whether ODOT had notice, the Tenth District Court of Appeals stated “construing the evidence in a light most favorable to plaintiff, the record establishes that Piwinski acted negligently in failing to notify ODOT of the downed stop sign after having volunteered to do so.” *Yonkings I*, at ¶ 44.

{¶8} Under the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379 (1995), syllabus. “In Ohio, ‘[t]he doctrine of res judicata encompasses the two related concepts of claim preclusion \* \* \* and issue preclusion, also known as collateral estoppel.” *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 120 Ohio St.3d 386, 2008-Ohio-6254, ¶ 27, quoting *O’Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, ¶ 6.

{¶9} “[I]ssue preclusion, [or] collateral estoppel, holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different.” *Id.*, quoting *Ft. Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395 (1998). “While the merger and bar aspects of res judicata have the effect of precluding the relitigation of the same cause of action, the collateral estoppel aspect precludes the relitigation, in a second action, of an issue that had been actually and necessarily litigated and determined in a prior action that was based on a different cause of action.” *Id.*

{¶10} “Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is

asserted was a party in privity with a party to the prior action.” *Id.* quoting *Thompson v. Wing*, 70 Ohio St.3d 176, 183 (1994).

{¶11} Plaintiff concedes that elements 1 and 3 of issue preclusion have been met; however, plaintiff argues that whether ODOT had notice was never passed upon, determined or necessary to the Tenth District Court of Appeals’ decision in *Yonkings I*. Contrary to plaintiff’s position, the Tenth District Court of Appeals stated that “Piwinski acted negligently in failing to notify ODOT of the downed stop sign after having volunteered to do so.” *Yonkings I*, at ¶ 44.

{¶12} Upon review, the court finds that the facts alleged in plaintiff’s complaint arise out of the occurrence that was the subject matter of *Yonkings I*. A court of competent jurisdiction determined that Piwinski was negligent in failing to notify ODOT of the downed stop sign. Accordingly, the court finds that the doctrine of collateral estoppel precludes relitigation of that issue. Consequently, there are no genuine issue of material fact and defendant is entitled to judgment as a matter of law.

{¶13} Accordingly, defendant’s motion for summary judgment is GRANTED and 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.

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PATRICK M. MCGRATH  
Judge

cc:

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