

[Cite as *Maxwell v. Ohio Dept. of Transp.*, 2015-Ohio-5352.]

MARK S. MAXWELL

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2015-00198-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} This matter is before the Court as a result of a complaint filed on March 13, 2015 by Mark S. Maxwell (hereinafter “plaintiff”) against the Ohio Department of Transportation (hereinafter “ODOT”), for damages that occurred at his home located in Bridgetown, Hamilton County, Ohio on or about December 10, 2014.

{¶2} In his complaint, the plaintiff states as follows:

- a) “Occasionally water tower two doors up the street from my home discharges water. Water comes down culvert in front yard of my home and goes under Bridgetown Rd. through a 16 inch stormwater pipe and discharges into woods across the street. Apparently over the years pipe became clogged with dirt, debris and tree roots. I have two basement floor drains that goes into clogged pipe. Due to clog my basement had 5-6 inches of water throughout. I have lived here for 26 years, this has never happened before.”

{¶3} As a result of his basement flooding, plaintiff claims the loss of items of personal property valued at \$1,553.80. Plaintiff’s homeowner’s insurance policy does not provide coverage for water backup.

{¶4} In an Investigation Report filed on June 5, 2015, ODOT denied liability for plaintiff’s damages and indicates as follows:

{¶5} ODOT alleged that the first documented contact the agency received from the plaintiff was in December of 2014. Prior to this, ODOT had not been notified of any drainage problems in the area. After receiving notification from plaintiff, ODOT began work on site to locate the drainage system, and discovered that the outlet end of the pipe was on private property, outside the ODOT right-of-way. This, according to ODOT, indicates that the pipe was extended by a property owner at some point in the past. ODOT has been unable to find any records of a permit for this pipe. ODOT cleaned out the partially filled pipe and cleared the area around the outlet on private property.

{¶6} ODOT argues that it should not be held responsible for plaintiff's losses as it had no notice of drainage issues in the area of the incident prior to plaintiff's flooding and further that the pipe was on plaintiff's property and not within ODOT's right-of-way, and thus not their responsibility to clear and maintain.

{¶7} The relative positions of the parties make it obvious that while there is no real dispute regarding the facts of the case, the parties are at an impasse on the issue of legal responsibility and thus liability.

{¶8} In this case, the pipe that was clogged was on plaintiff's property and not in ODOT's right-of-way. Therefore, keeping the drain clear was the responsibility of the plaintiff and not ODOT. However, ODOT could still be found liable for the damages to plaintiff's property if it could be shown that the agency had been negligent in the way the roadway and right-of-way had been designed, constructed, or maintained and thus created the conditions that led to the flooding. The first step in making a finding of negligence against ODOT in this case would be to show ODOT either knew or should have known about the clogged pipe. In this case, the plaintiff did not contact ODOT about the drainage problems until after the flooding occurred. Further, the clogged pipe that caused the flooding was on plaintiff's property and not on the right-of-way and thus would have escaped discovery by ODOT's maintenance crews when the roadway was

periodically inspected for issues. Finally, there is no evidence that the right-of-way flooded or regularly had high standing water thus placing ODOT on notice that there were drainage problems in the area.

{¶9} Thus the Court cannot find ODOT either knew, or should have known about the clogged pipe, and therefore is unable to find any negligence on the part of ODOT in the flooding.

{¶10} Based on this finding therefore, the plaintiff's claim must fail and the complaint filed March 13, 2015 is hereby DISMISSED.

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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.

MARK H. REED
Clerk

Entry cc:

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