

pertinent part:

{¶5} "Defendant contends that Allstate's claim should be dismissed because Allstate lacks standing to bring this claim against defendant since Allstate is not entitled, as a matter of law, to bring this subrogation action. R.C. 2743.02(D), states in pertinent part:

{¶6} 'Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. * * *'

{¶7} This statute makes it clear that a claimant's award against the state shall be reduced by any benefit received from an insurance policy or other collateral source. As such, it follows that this statute prohibits an insurer from bringing a subrogation claim against the state. *Community Insurance Company v. Ohio Dept. of Transportation* (2001), 92 Ohio St. 3d 376.

{¶8} Allstate has asserted a subrogation claim against the defendant. By definition, a subrogee has only those rights its insured has. An insured cannot transfer a right of recovery which such insured does not have. *Grange Mut. Cas. Co. v. Columbus* (1989), 49 Ohio App. 3d 50. Under R.C. 2743.02(D), an insured has no right to recover any amount such insured had received through insurance or other collateral sources. It follows then that the

{¶9} insurer has no subrogation right. *Chemtrol Adhesives, Inc. v. America Mfrs. Mut. Ins. Co.* (1989), 42 Ohio St. 3d 40, paragraph one of the syllabus (an insurer-subrogee cannot succeed to acquire any right or remedy not possessed by its insured-subrogor).";

{¶10} On April 23, 2002, plaintiff filed a brief in opposition to defendant's motion to dismiss;

{¶11} In support of the brief in opposition, plaintiff stated in pertinent part:

{¶12} "The Defendant relies solely upon Ohio Revised Code §2743.02(D) in support of its argument. This statute does not deny parties the right to seek subrogation against the state. This statute only seeks to prevent possible "double dipping" by claimants who are entitled to received reimbursement from multiple sources and who may seek additional compensation from the State of Ohio. Ohio Revised Code §2743.02(D), states in part:

{¶13} 'Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. *** (*emphasis added*)'

{¶14} Allstate, the Plaintiff and claimant in this case, has not received any insurance proceeds, disability awards, or other collateral recovery as required for O.R.C. §2743.02(D) to take effect. Furthermore, Plaintiff is not entitled to receive reimbursement from any of the identified sources. Plaintiff paid property damage benefits to its insured as a direct result of the

{¶15} negligence of Defendant's alleged employee, thereby stepping into the shoes of its insured. Plaintiff's insured could have chosen to simply file suit against the Defendant without involving Allstate, however, Plaintiff's insured chose to exercise his right to file his claim with Allstate, thereby giving Plaintiff the constitutional right to seek reimbursement via subrogation from Defendant . . .

{¶16} Defendant cites *Community Insurance Co. v. Ohio Dept. of Transportation*, 750 N.E. 2d 573 (Ohio 2001), as supporting its position that Defendant is immune from a lawsuit involving a

subrogation claim. It should be noted that Community centers around medical insurance benefits, while the case at bar is for property damage only. It should be further noted that three justices were in the 'majority', three justices in the dissent, and one judge that concurred in the judgment only, presumably, not the reasoning. In Community, the 'majority' incorrectly held that the State is like a political subdivision and is immune from subrogation. . . The Ohio Department of Transportation is a 'department' under O.R.C. §2743.01(A) and therefore is not a political subdivision. Unlike the state, political subdivisions are immune from subrogation claims, the General Assembly made this

{¶17} very clear in O.R.C. §2744.05(B). . . The General Assembly has purposely prohibited insurance subrogation actions against political subdivisions when it passed O.R.C. §2744.05(B). The General Assembly had this same opportunity when it passed both O.R.C. §2743.02(D) and O.R.C. §2743.02(A). At neither time did the General Assembly choose to prohibit insurance subrogation actions against the state."

{¶18} THE COURT CONCLUDES THAT:

{¶19} Subrogation action brought by insurance company seeking recovery of insurance benefits paid to insured who was injured by the state is prohibited by R.C. 2743.02(D). *Community Insurance Company v. Ohio Department of Transportation* (2001), 92 Ohio St. 3d 376;

{¶20} Plaintiff essentially wishes to relitigate the Ohio Supreme Court's holding in *Community Insurance Company*, supra. This court has no authority to entertain such an "appeal";

{¶21} The court is bound to following the holdings of the Ohio Supreme Court.

{¶22} IT IS ORDERED THAT:

{¶23} Defendant's motion to dismiss is GRANTED;

{¶24} Plaintiff case is DISMISSED;

[Cite as *Allstate Ins. Co. v. Dept. of Transp.*, 2002-Ohio-6399.]
{¶25} Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

DRB/laa
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