

IN THE COURT OF CLAIMS OF OHIO

ELIZABETH A. LACEY, etc., et al.

Plaintiffs

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2022-00415JD

Judge Patrick E. Sheeran  
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

---

{¶1} On July 12, 2022, Defendant, Ohio Department of Transportation (ODOT), filed a motion to dismiss Plaintiffs' complaint pursuant to Civ.R. 12(B)(6). Because the motion relies on evidence outside the complaint, the court issued an order on August 5, 2022, converting the motion to one for summary judgment. Plaintiffs did not file a response to the motion. The motion is now before the court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4.

{¶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, 821 N.E.2d 564, ¶ 6, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 364 N.E.2d 267 (1977).

{¶4} In the complaint, Plaintiffs relate that on July 22, 2021, they were travelling within a construction zone on Interstate Route 80 (I-80) in Williams County when their vehicle was struck from behind by a semi-tractor and trailer, causing them to be injured. Plaintiffs brought this action against both the Ohio Turnpike and Infrastructure Commission, which is no longer a party, and ODOT, claiming that one or both of them “were negligent in the design and implementation of the I-80 Construction Project, and, furthermore, failed to provide the motoring public, and specifically, Plaintiffs, with a safe roadway.” Complaint, ¶ 17.

{¶5} ODOT argues that it has no legal responsibility for an accident that allegedly occurred as a result of the design, maintenance or repair of I-80, commonly referred to in this state as the Ohio Turnpike. ODOT cites the provisions of R.C. Chapter 5537 regarding the authority and powers of the Ohio Turnpike and Infrastructure Commission, which under R.C. 5537.04(A)(4) is subject to suit in the courts of common pleas. ODOT also provided the affidavit of Patrick McColley, PE, SI, attesting to the fact that ODOT was not involved in the construction project at issue in the complaint. McColley avers:

1. I am employed as the District Deputy Director of District Two for the Ohio Department of Transportation (“ODOT”);
2. I have been an employee with ODOT for 5 years and in my current position for 5 years;
3. I have reviewed the Complaint in the matter of Elizabeth A. Lacey, etc., et al. v. Ohio Department of Transportation, case number 2022-00415JD pending in the Ohio Court of Claims, which alleges claims against the Ohio Department of Transportation (“ODOT”) and the Ohio Turnpike and Infrastructure Commission (“OTIC”) arising out of a motor vehicle accident that occurred on July 22, 2021 and allegedly as a result of a construction project (“Project No. 39-20-01”) for repairs on Interstate 80 (Ohio Turnpike) in Williams County, Ohio.
4. ODOT was not involved in the construction project referenced in the Complaint.

{¶6} Upon review of Plaintiffs’ complaint and McColley’s uncontested affidavit testimony, reasonable minds can only conclude that the highway construction project

from which Plaintiffs' claims allegedly arose was not conducted by ODOT, nor was it under the control or jurisdiction of ODOT. As a result, it must be concluded that Plaintiffs cannot prevail on their claims against ODOT.

{¶7} For the foregoing reasons, the court concludes that there are no genuine issues of material fact and that ODOT is entitled to judgment as a matter of law. Accordingly, ODOT's motion for summary judgment is GRANTED and judgment is rendered in favor of ODOT. Court costs are assessed against Plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

---

PATRICK E. SHEERAN  
Judge

Filed October 5, 2022  
Sent to S.C. Reporter 11/4/22