

[Cite as *Hughes v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-4462.]

IN THE COURT OF CLAIMS OF OHIO
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MARVIN HUGHES	:	
Plaintiff	:	CASE NO. 2004-08120
v.	:	Judge J. Craig Wright Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>ENTRY GRANTING DEFENDANT'S</u> <u>MOTION FOR SUMMARY JUDGMENT</u>
Defendant	:	
	:	

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{¶ 1} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant. Plaintiff alleges in his complaint that he was injured when defendant's roofing contractor allowed hot tar to drip onto one of his hands while repairs were being made to one of defendant's buildings.

{¶ 2} On June 22, 2005, defendant filed a motion for summary judgment. Plaintiff has not opposed the motion. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

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

{¶ 4} "**** 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, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 5} In support of the motion for summary judgment, defendant submitted a properly authenticated copy of its contract with U.S. Roofing, Inc. for the repairs at issue. Article One of the contract provides in relevant part: "The contractor shall perform the entire work described in the Contract Documents ***." Defendant also submitted the affidavit of Joette Derrick, defendant's deputy warden of administration, wherein Derrick states: "During the Roof Replacement project at the Madison Correctional Institution, only employees of U.S. Roofing, Inc. performed the labor that went into the actual replacement of the roof, including all laying of tar."

{¶ 6} As a general rule, although an employer may be liable for the negligent acts of an employee within the scope of that employment, one who engages an independent contractor is not liable for the negligent acts of the contractor or its employees. *Pusey v. Bator*, 94 Ohio St.3d 275, 278, 2002-Ohio-795. "The chief test in determining whether one is an employee or an independent contractor is the right to control the manner or means of performing the work." *Bobik v. Industrial Commission* (1946), 146 Ohio St. 187, at paragraph one of the syllabus. "If such right is in the employer, the relationship is that of employer and employee,

or master and servant; but if the manner or means of performing the work is left to one responsible to the employer for the result alone, an independent contractor relationship is created." Id. at paragraph two of the syllabus.

{¶ 7} Plaintiff has presented no evidence to support a finding that an employment relationship existed between defendant and the employees of the roofing contractor. Although plaintiff may have a claim against U.S. Roofing, Inc., liability will not be imposed upon defendant for any negligence on the part of its contractor's employees.

{¶ 8} In short, upon review of defendant's motion for summary judgment and the evidentiary materials submitted therewith, and construing the facts most strongly in plaintiff's favor, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law.

{¶ 9} Defendant's motion for summary judgment is GRANTED and judgment is entered 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.

J. CRAIG WRIGHT
Judge

Entry cc:

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ENTRY

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LP/cmd/Filed August 10, 2005/To S.C. reporter August 29, 2005