

COURT OF APPEALS
MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BARRY AND SHELLEY HOBSON

Plaintiff-Appellant

-vs-

MORROW COUNTY COMMISSIONERS

Defendant-Appellee

JUDGES:

: Hon: W. Scott Gwin, P.J.
: Hon: Sheila G. Farmer, J.
: Hon: John W. Wise, J.
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: Case No. 2004-CA-0003
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: OPINION

CHARACTER OF PROCEEDING: Civil appeal from the Morrow County Court
of Common Pleas, Case No. 02CV26190

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: December 3, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Gwin, P.J.

{¶1} Plaintiffs Barry C. and Shelley Hobson appeal a summary judgment of the Court of Common Pleas of Morrow County, Ohio, entered in favor of defendant Morrow County Commissioners. All Crane Rental Corporation is also a party, but is not a party to this appeal. Appellants assign two errors to the trial court:

{¶2} “I. IN THIS NEGLIGENCE ACTION, THE TRIAL COURT ERRED BY GRANTING DEFENDANT-APPELLEE’S MOTION FOR SUMMARY JUDGMENT AFTER MAKING FACTUAL CONCLUSIONS, WITHOUT ALLOWING THE PLAINTIFF-APPELLANTS THE OPPORTUNITY TO CONDUCT DISCOVERY, DESPITE THE FILING OF A PROPER AFFIDAVIT BY COUNSEL FOR PLAINTIFF-APPELLANTS OUTLINING THE NEED FOR ADDITIONAL DISCOVERY.

{¶3} “II. THE TRIAL COURT ERRED BY FAILING TO PROPERLY RECONSIDER ITS DECISION TO GRANT DEFENDANT-APPELLEE’S MOTION FOR SUMMARY JUDGMENT EVEN THOUGH PLAINTIFF-APPELLANTS FILED LIMITED ADDITIONAL DEPOSITION TESTIMONY AFTER THE MOTION HAD BEEN FILED BUT BEFORE THE TRIAL COURT RENDERED ITS INITIAL DECISION.”

{¶4} Appellees propose a single assignment of error:

{¶5} “I. THE TRIAL COURT ERRED BY HOLDING THAT APPELLEE IS NOT IMMUNE FROM APPELLANTS’ CLAIMS PURSUANT TO R.C. 2744.03.”

{¶6} This action arose out of a motor vehicle accident in Harmony Township, Morrow County, Ohio. While in the course of his employment with All Crane Rental

Company appellant Barry Hobson drove an overweight industrial crane across a bridge. The deck of the bridge broke under the weight of the crane and appellant was injured.

{¶7} Appellants brought suit against the Morrow County Board of Commissioners, and the other parties were later interpleaded. Eventually, appellee filed its motion for summary judgment on November 5, 2003, asserting two reasons why they should prevail. First, appellees alleged appellant Barry Hobson's negligence in driving the overweight vehicle over the bridge was the sole proximate cause of his injuries; and secondly, that appellees were entitled to immunity under R.C. 2744.03. In response, appellants sought additional time to conduct discovery pursuant to Civ. R. 56 (F).

{¶8} On January 22, 2004, the trial court granted summary judgment in favor of appellees, finding there was no genuine issue of material fact, and finding appellants' own negligent and illegal conduct was the sole proximate cause of the accident. The January 22 judgment entry did not dispose of all of the claims of all of the parties, and did not contain language pursuant to Civ. R. 54, finding there was no just reason for delay. For this reason, the judgment on this claim was not a final appealable judgment.

{¶9} On February 6, 2004, appellant filed their motion to reconsider the granting of the motion for summary judgment, or in the alternative, for a Civ. R. 54 entry.

{¶10} The court overruled the motion for reconsideration, and entered judgment finding no just reason for delay, and this appeal ensued.

I & II

{¶11} Because both of appellants' assignments of error address the same issue, we will treat them together.

{¶12} Civ. R. 56 (F) provides:

{¶13} “Should it appear from affidavits of a party opposing the motion for summary judgment that the party cannot for sufficient reasons stated present by affidavit facts essential to justify the party’s opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits be obtained or discovery to be had or may make such other order as is just.”

{¶14} The Supreme Court’s most recent discussion of Civ. R. 56 is in the case of *Hooten v. Safe Auto Insurance Company*, 100 Ohio St. 3d 8, 2003-Ohio-4829, 795 N.E. 2d 648. The *Hooten* case dealt with deadlines for submitting summary judgment materials, but the Supreme Court briefly discussed summary judgments in general. The court found although a court may rule on a motion for summary judgment after the parties have sufficient notice of the hearing date or submission deadlines, the court cautioned this holding does not condone a hasty judgment. One of the overriding goals of Civ. R. 56 is fundamental fairness to all litigants, given the high stakes involved when summary judgment is sought. Because summary judgment terminates litigation without benefit of a trial on the merits, compliance with both the letter and spirit of the rule is of paramount importance. The rule’s procedural fairness requirements place significant responsibilities on all parties and judges to ensure summary judgment should be granted only after all parties have had a fair opportunity to be heard, *Hooten*, paragraph 34, citation deleted. The Supreme Court did not address the Civ. R. 56 (F) motion for continuance because it was not raised in the court of appeals.

{¶15} The gravamen of appellants’ appeal is that the trial court cut short the discovery because it found further discovery would not produce any relevant evidence.

{¶16} In *Winegar v. Greenfield Police Department*, Highland Appellate No. 00CA18, 2002-Ohio-2173, the Fourth District Court of Appeals held an injury may have more than one proximate cause. If two factors combine to produce damage or illness, each is a proximate cause, *Winegar* at 8, citing *Murphy v. Carrollton Manufacturing Company* (1991), 61 Ohio St. 3d 585, 575 N.E. 2d 828.

{¶17} The trial court found regardless of the condition of the bridge at the time of collapse, the proximate cause can only be the excess weight of both axles of the crane. This is not necessarily a correct statement of law.

{¶18} On January 28, 2004, after the court's judgment entry, appellants filed additional evidence, including answers to interrogatories and the deposition of Randy Bush, the Morrow County Engineer. The trial court did not review any of this evidence.

{¶19} We find the trial court should have sustained the Civ. R. 56 (F) motion, and allowed appellants additional time to produce evidence, thus assuring the parties the matter would be decided on its merits. We note we do not hold reasonable minds could differ regarding the summary judgment, but only that the summary judgment was premature. The court may again enter summary judgment on behalf of appellees, or could find the matter presented a jury question. This can be decided only after full discovery.

{¶20} We find the trial court erred in not sustaining the Civ. R. 56 (F) motion, and in not reconsidering its interlocutory order as appellants requested.

{¶21} The first and second assignments of error are sustained.

{¶22} Turning now to appellees' assignment of error, the trial court found appellees were not entitled to immunity under R.C. 2744.03, which specifically excepts

the maintenance of bridges. The trial court found the language of the statute and the intention of the legislature are both clear, and appellees are liable for any failure to keep their bridges in repair and free of nuisance. Appellees ask this court to reverse the trial court on this issue.

{¶23} We have reviewed the record, and we find no notice of appeal by appellee, which would invoke this court’s jurisdiction to review this issue. Accordingly, the assignment of error is overruled as moot.

{¶24} For the foregoing reasons, the judgment of the Court of Common Pleas of Morrow County, Ohio, is reversed, and the cause is remanded to that court for further proceedings in accord with law and consistent with this opinion.

By Gwin, P.J.,
Farmer, J., and
Wise, J., concur

JUDGES

