[Cite as *Haake v. Ohio Dept. of Transp.*, 2008-Ohio-2849.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

MICHAEL D. HAAKE

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-05733-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Michael D. Haake, filed this complaint against defendant, Department of Transportation ("DOT"), alleging roadway improvement work performed on State Route 65 in Henry County caused flooding problems to his wheat field located adjacent to the roadway. Plaintiff related, "[t]he state had a new bridge put in," on State Route 65 on October 26, 2006. According to plaintiff, the roadway drainage ditch along State Route 65 was "blocked off for over 2 months" while the road work was being performed and "when they finally had the new bridge put in, our wheat field was completely under water." Plaintiff asserted his wheat field was flooded, "[b]ecause water would not run (through the) ditch" creating the "wrong grade" for sufficient water drainage. Plaintiff recalled DOT's inspector declared the roadway improvement job totally completed by November 2006, although DOT's contractor returned during April 2007 to remove "huge rocks in (the) bottom of (the) ditch." Plaintiff asserted that after the rocks were removed from the drainage ditch, the field tile drainage on his fields worked properly and he presumedly did not experience additional flooding problems with his wheat fields. Plaintiff alleged the acts of defendant's contractor in placing rocks along the bottom of the roadway drainage ditch affected the efficiency of his field tile drainage resulting in the loss of forty-five acres of planted wheat from water damage. Consequently, plaintiff filed this complaint seeking to recover $2,500.00, an amount he stated he spent on seed and fertilizer for his washed-out wheat crop. The filing fee was

paid.

{¶2} Defendant denied any liability for any damage plaintiff may have suffered for loss of a portion of his wheat crop due to high water in the field area adjacent to State Route 65. Defendant acknowledged a DOT contractor, "performed a construction project on SR 65 in 2006 which included replacing a culvert over a waterway to which (plaintiff's) farm field tile drained; approximately 200 yards 'up stream' from the culvert." Defendant explained when the culvert was replaced "the watercourse was diverted" during the autumn months of 2006. Defendant observed the watercourse diversion "did temporarily cause the water table in the vicinity of the roadway ditch to rise which may have decreased the drainage efficiency of (plaintiff's) field tile drainage." According to defendant, even after the watercourse diversion was removed in "late 2006," plaintiff still had drainage problems with his field. Defendant stated DOT's on-site field engineer noted plaintiff's field "was always the last to drain, before, during, and after the redirection of the roadway ditch." Defendant contended plaintiff's drainage problems were probably caused by a failure by plaintiff to maintain his drainage tile, which "continues to apparently be in poor condition." Defendant pointed out plaintiff's drain tile is sited "approximately 1.5 feet on average, from the bottom of the ditch" and the "tile ends were often under water" after minimal precipitation. Defendant acknowledged plaintiff has experienced flooding problems on his farm field. However, defendant contended plaintiff failed to produce sufficient evidence to establish the flooding was caused by any failure on the part of DOT to maintain drainage under its responsibility. Conversely, defendant asserted plaintiff's own poorly constructed or inadequately maintained field tile caused the damage addressed in the complaint.

{¶3} In support of the contention plaintiff did not produce sufficient evidence to establish liability, defendant cited *Ryan v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2003-09297-AD, 2004-Ohio-900. This court in *Ryan*, held a plaintiff in order to sustain his burden of proof in a claim of this type must supply expert testimony regarding the causation of his damages. Defendant related plaintiff is required to "produce more than

his lay opinion as to the cause of the flooding." Defendant argued plaintiff has not proven any acts of DOT or DOT contractors caused the flood damage claimed. Defendant stated "[g]iven the current evidence, it is just as probable that the true cause of the flooding was either the improper construction of the tile or some failure of drainage within some 200 yards of tile that runs from the drainage ditch." Defendant denied any acts of DOT or DOT contractors constituted negligence in regard to the culvert replacement project during the autumn of 2006.

{¶4} Plaintiff filed a response insisting the problems he experienced with flooding were the result of negligent design and engineering of the drainage ditch adjacent to his field. Plaintiff related a DOT contractor during the summer of 2007 removed "6 inches out of the bottom of the ditch." Plaintiff maintained the work on the drainage ditch was performed, "because the outlet tile did not run for 8 months after (the) project was completed." Plaintiff noted, "[o]nce the contractor took out the high spots of the bottom of the ditch water ran as it was intended." Plaintiff asserted negligence has been shown since a DOT inspector and a DOT engineer declared the project was completed in November 2006, but ameliorating work had to be done on the drainage ditch in the summer of 2007.

{¶5} In order for plaintiff to prevail upon his claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707. A breach of duty can be found only if defendant's interference with drainage water flow is unreasonable, which is determined "by balancing the gravity of the harm caused by the interference against the utility of the [defendant's] conduct." *McGlashan v. Spade Rockledge Terrace Condo Dev. Corp.* (1980), 62 Ohio St. 2d 55, at 60, 16 O.O. 3d 41, 402 N.E. 2d 1196, adopting 4 Restatement on Torts 2d (1979), 146, Section 833.

{¶6} Plaintiff claimed defendant maintained a defective drainage ditch that

ultimately caused flooding in his adjacent field. As a necessary element of his particular claim, plaintiff was required to prove the proximate cause of his damage by a preponderance of the evidence. See e.g. *Stinson v. England*, 69 Ohio St. 3d 451, 1994-Ohio-35, 633 N.E. 2d 532. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶7} "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327. In a situation such as the instant claim, plaintiff is required to produce expert testimony regarding the issue of causation and that testimony must be expressed in terms of probability. *Stinson*, 69 Ohio St. 3d 451, 454, 1994-Ohio-35, 633 N.E. 2d 532. Plaintiff, by not supplying the requisite expert testimony to state a prima facie claim has failed to meet his burden of proof. See *Ryan*, Ct. of Cl. No. 2003-09297-AD; also *Ringel v. Ohio Dept. of Transp.*, Ct. of Cl. NO. 2006-022081-AD, 2006-Ohio-7279. Plaintiff has failed to prove DOT's drain ditch maintenance proximately caused the damage claimed. See *Wasilewski v. Ohio Dept. of Transportation*, Ct. of Cl. No. 2004-03560-AD, 2004-Ohio-7326.

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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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Michael D. Haake
4-620 St. Rt. 281
Malinta, Ohio 43535

James G. Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
3/20

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