

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

RUSSELL HARTSTOCK

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2008-09244-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} During June 2008, Anthony Allega Cement Contractor, Inc. (“Allega”), a contractor of defendant, Department of Transportation (“DOT”), performed roadway construction work on State Route 86 in Lake County. The particular construction project involved grading, draining and paving State Route 86 as well as erecting a cellular retaining wall and constructing a bridge over Kellog Creek in Lake County. On June 2, 2008, Allega personnel replaced the waterline in front of a residence on Bank Street in Painesville, Ohio. This particular residence is adjacent to State Route 86 and is the residence of the mother of plaintiff, Russell Hartstock.

{¶ 2} Plaintiff related that when Allega connected the waterline at the Bank Street residence the water service to the house was to be disconnected for a two to three hour period. However, plaintiff recalled water service was still not restored to the home when he went there on June 3, 2008. Plaintiff stated “[a]fter inspection of the water system, I concluded the main line to the kitchen and bath were totally plugged.” Plaintiff noted he spoke with an Allega representative who agreed to “purchase a new faucet and toilet control” for the Bank Street home. Plaintiff pointed out he installed the

new parts and also “had to flush the entire home system of dirty water from the new main connection.” Furthermore, plaintiff maintained he “also had to flush and refill the hot water heater of contaminated water and cleaned the incoming water screen to the washer” at the Bank Street residence. Plaintiff asserted he expended six hours time to “complete the work and have clean running water in the house.” Plaintiff filed this complaint seeking to recover \$270.00 in damages, an amount that represents six hours wages for the time he spent correcting the water problems in his mother’s home. Plaintiff submitted the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim. Plaintiff contended DOT should be responsible for the time he expended in working on the water problems attributable to Allega installing a new water main.

{¶ 3} Defendant acknowledged that on June 2, 2008, DOT contractor Allega was involved in construction activities on State Route 86 in Painesville, Ohio. All construction work performed by Allega was to be done in accordance with DOT specifications and requirements and subject to DOT approval. Defendant asserted that under the contract between DOT and Allega, Allega assumed responsibility “for any occurrences or mishaps in the area in which they are working.” Defendant pointed out the damage incident described by plaintiff constitutes such an occurrence which Allega is responsible for according to contract. Defendant contended DOT is not the proper party defendant based on the facts of the property damage occurrence as depicted by plaintiff.

{¶ 4} Defendant submitted a letter from DOT Project Inspector, Geoff Neeson, regarding his findings concerning the issue forming the basis of this claim. Referring to the waterline installation by Allega, Neeson explained:

{¶ 5} “The work was done in accordance with the plans and specifications and was inspected by the City of Painesville, the maintaining agency. A city inspector was present during the entire work process. The work at the home in question consisted of:

{¶ 6} “1) turning off the service

{¶ 7} “2) moving the service connection from the old waterline to the new waterline

{¶ 8} “3) turning the service back on.”

{¶ 9} Neeson found, “[n]o other resident has made such a claim (about water

problems) and there is no evidence that the new waterline work clogged the plumbing” at the home of plaintiff’s mother.

{¶ 10} Defendant contended plaintiff has failed to prove any problems with water service at the Bank Street residence were caused by conduct attributable to DOT or Allega. Defendant reasserted DOT cannot bear any responsibility for the acts of Allega in installing a new main waterline.

{¶ 11} Assuming the damages claimed were attributable to the act of Allega in installing a waterline, defendant bears no responsibility under the present facts. It has been previously held that the duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor engaging in roadway construction. See *Cowell v. Ohio Department of Transportation*, Ct. of Cl. No. 2003-09343-AD, jud, 2004-Ohio-151.

{¶ 12} Despite defendant’s contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with duties to inspect the construction site and correct any known deficiencies in connection with particular construction work. See *Roadway Express, Inc. v. Ohio Dept. of Transp.* (June 28, 2001), Franklin App. No. 00AP-1119. However, no evidence has been provided to establish any damage claimed was caused by actual roadway construction work. Plaintiff alleged his damages were proximately caused by Allega installing a new main waterline servicing the Bank Street residence in Painesville. Under these facts the immunity granted DOT in *Gore v. Ohio Dept. of Transp.* (March 31, 2003), Franklin App. No. 02AP-996, 2003-Ohio-1648 is applicable. Defendant may delegate the duty to an independent contractor to install a waterline and no liability arises from such delegation. Plaintiff’s claim is dismissed.

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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:

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RDK/laa
4/8
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