

Court of Claims of Ohio

The Ohio Judicial Center
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RUSSELL DEAN RICHES, SR.

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-10749

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On August 20, 2009, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On September 1, 2009, the court attempted to conduct a discovery status conference with the parties. Plaintiff was not available for the conference and did not file a response to defendant's motion. Defendant's motion for summary judgment is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 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 County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} On November 8, 2006, plaintiff was driving a tractor-trailer northbound on State Route 109 (SR 109) in northwest Ohio when the vehicle left the traveled portion of the roadway, rolled over, and came to a stop in a ditch that runs parallel to the road. Plaintiff alleges that defendant negligently failed to erect guardrails and install "rumble strips" on the portion of the road where he crashed, and also that the berm of the road was not wide enough. Plaintiff argues that these factors were the cause of his crash and that defendant is therefore liable for damages in the amount of \$3,952,000.

{¶ 5} Defendant contends that it was not required to install guardrails or rumble strips along the portion of SR 109 where the accident occurred and that the berm in that area met the requisite standards regarding width.

{¶ 6} 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 defendant's acts or omissions resulted in a breach of 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, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Defendant has a general duty to maintain its highways in a reasonably safe condition. *Knickel v. Ohio Dept. of Transp.* (1976), 49 Ohio App.2d 335. However, defendant is not an insurer of the safety of its highways. See *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App.3d 723.

{¶ 7} In support of its motion, defendant provided the affidavit of Aaron D. Behrman, a professional engineer employed by defendant. Behrman states that defendant is required to install rumble strips on interstate highways and freeways, but

not on two-lane state routes such as SR 109. Regarding the width of the berm and installation of a guardrail, Behrman states that defendant met the requirements of the Location and Design Manual: Vol. One, Road Design (Manual) with respect to the width of the berm and that the Manual does not require guardrails in the area where the accident occurred. Finally, after reviewing the plaintiff's complaint, a police report of the accident, and the Manual, Behrman concludes that defendant "met all specifications of the construction of the road to ensure safety."

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

{¶ 9} "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party."

{¶ 10} Based upon the uncontested affidavit testimony of Behrman, the court finds that defendant did not commit a breach of any duty owed to plaintiff and that defendant properly constructed and maintained the portion of SR 109 where plaintiff's accident occurred. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered 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.

CLARK B. WEAVER SR.
Judge

cc:

Case No. 2008-10749

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ENTRY

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MR/cmd
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