

[Cite as *Royal Ins. Co. v. Ohio Dept. of Transp.*, 2002-Ohio-6868.]

IN THE COURT OF CLAIMS OF OHIO

ROYAL INSURANCE COMPANY :
Plaintiff : CASE NO. 2002-02043
v. : DECISION
DEPARTMENT OF TRANSPORTATION : Judge Fred J. Shoemaker
Defendant :
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{¶1} On September 23, 2002, defendant Ohio Department of Transportation (ODOT), filed a motion for summary judgment. On October 11, 2002, plaintiff Royal Insurance Company (Royal), filed a memorandum contra. This matter is now before the court for a non-oral hearing on the motion for summary judgment.

{¶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, *Williams v. First United Church*

of *Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is not disputed that ODOT issued a Special Hauling Trip Permit to All Crane Rental Corporation (All Crane) allowing All Crane to haul an oversized load measuring 14'5" in height; that on February 3, 2000, a 1995 Peterbilt tractor-trailer owned by All Crane and operated by All Crane employee, William Hanners, collided with a bridge overpass at I-71 and I-270 in Columbus, Ohio; that the tractor-trailer was hauling a large HVAC unit on that day; that the HVAC unit was severely damaged; and that Royal paid All Crane a sum of money for the damages pursuant to a contract of insurance between All Crane and Royal. In this action, Royal seeks to recover those sums paid to All Crane based upon ODOT's alleged negligence in issuing the permit.

{¶5} In its motion, ODOT argues that under R.C. 2743.02(D) and the rule of law set forth in *Community Ins. Co. v. Dept. of Transp.*, 92 Ohio St.3d 376, 2001-Ohio-208, Royal is not entitled to recover from the state any monies paid on behalf of All Crane. The court agrees.

{¶6} By operation of R.C. 2307.31, Royal is subrogated to any right of recovery All Crane may have against ODOT.¹ In *Community Ins.*, supra, the Supreme Court of Ohio held that an insurer that has been granted the right of subrogation by a person on whose behalf the insurer has paid medical expenses incurred as the result of the negligent conduct of the state is subject to the statute which mandates reduction in recoveries against the state by the "aggregate of insurance proceeds, disability award or other collateral recovery received by the claimant." R.C. 2743.02(D).

{¶7} Had All Crane pursued a claim against ODOT to recover for damages to the HVAC unit, its recovery would be reduced by the insurance proceeds paid on their behalf.

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R.C. 2307.31(C) states in pertinent part:

"A liability insurer that by payment has discharged in full or in part of the liability of a tortfeasor and has thereby discharged in full its obligation as insurer is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's proportionate share of the common liability. ***"

See R.C. 2743.02(D) and *Community Ins.*, supra. As a subrogee of All Crane, Royal acquires no greater rights against the state than All Crane. Thus, Royal is barred from any recovery in this case. Although Royal argues that R.C. 2743.02(D) was not intended as a bar to recovery under these facts, the court's interpretation is consistent with the legislative intent to preserve public funds while also providing reimbursement for an uninsured claimant. See *Community Ins.*, supra, at 378.

{¶8} In short, upon review of defendant's motion for summary judgment and the memoranda filed by the parties, and construing the facts in a light most favorable to plaintiff, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant.

{¶9} A non-oral hearing on defendant's motion for summary judgment was held on October 21, 2002. For the reasons set forth in the decision filed concurrently herewith, 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.

FRED J. SHOEMAKER
Judge

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