

# Court of Claims of Ohio

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65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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SUSIE HARRIS

Plaintiff

v.

CITY OF HUDSON

Defendant/Third-Party Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Third-Party Defendant

Case No. 2005-02869-PR  
Judge J. Craig Wright

ENTRY GRANTING THIRD-PARTY  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING CASE

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{¶ 1} On July 24, 2006, third-party defendant, Ohio Department of Transportation (ODOT), filed a motion for summary judgment pursuant to Civ.R. 56 and a motion for leave to supplement that motion with the signed affidavit of David Olson (aka Brian P. Olson). On August 2, 2006, ODOT filed the affidavit of Brian P. Olson.

{¶ 2} Thereafter, on August 24, 2006, defendant/third-party plaintiff, City of Hudson (Hudson), filed a combined memorandum in opposition to the motion for summary judgment and motion to strike Olson's affidavit. Upon review, ODOT's motion for leave is GRANTED, instanter, and Hudson's motion to strike is DENIED.

{¶ 3} Plaintiff has not opposed the motion for summary judgment. An oral hearing was held on August 25, 2006.

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

{¶ 5} “\*\*\* 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

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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.

{¶ 6} Plaintiff originally brought this case against Hudson in the Summit County Court of Common Pleas seeking to recover for flood damage to her property and personal injuries allegedly caused by a faulty storm culvert located near State Route (SR) 91 in Hudson Township. Hudson filed a third-party complaint against ODOT alleging that ODOT was responsible for the maintenance of the culvert even though it was within city limits.

{¶ 7} R.C. 723.01. provides:

{¶ 8} “Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation. The liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by a failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code.”

{¶ 9} R.C. 5521.01 entitled “Establishment and improvement of state highways within municipal corporation” provides in relevant part:

{¶ 10} “\*\*\*\* The director may establish, construct, reconstruct, improve, widen, maintain, or repair any section of state highway within the limits of a city, including the elimination of railway grade crossings, and pay the entire or any part of the cost and

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expense thereof from state funds, *but in all cases the director first shall obtain the consent of the legislative authority of the municipal corporation, \*\*\*.*” (Emphasis added.)

{¶ 11} It is undisputed that the culvert is located within city limits. The uncontroverted affidavit testimony of ODOT District 4 Area Maintenance Engineer, Brian P. Olson, is that ODOT has not maintained this stretch of roadway or the culvert since Hudson incorporated Hudson township in 1995. Olson further states that ODOT has not undertaken any construction or reconstruction in the area since SR 91 was first constructed in 1925. Hudson presented no evidence to support a finding either that the director had sought the consent of Hudson’s legislative authority with respect to maintenance of the culvert or that such consent had been given. According to Olson, his review of ODOT records reveals no agreement by ODOT to share maintenance responsibilities with Hudson for that portion of SR 91 now located within city limits. Furthermore, in responding to Hudson’s first set of interrogatories, plaintiff stated that after she moved onto the property in 1997, she complained to Hudson about the flooding problem and that Hudson responded by installing new sewer pipes and a catch basin.

{¶ 12} Upon review of the motion for summary judgment and the evidentiary materials submitted therewith, and construing the evidence in favor of Hudson, the court finds that the only reasonable conclusions to be drawn from the evidence is that ODOT owed no duty to plaintiff with respect to the maintenance of the culvert in question. Consequently, ODOT is entitled to judgment as a matter of law on the third-party complaint. ODOT’s motion for summary judgment is hereby GRANTED.

{¶ 13} Furthermore, the court finds that the state is no longer a party in this case. Accordingly, pursuant to R.C. 2743.03(E)(2), this case is hereby REMANDED to the Summit County Court of Common Pleas and the clerk is directed to return the original papers thereto. Court costs are assessed against defendant/third-party plaintiff. The clerk

