

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

ART RINGEL

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION,
DISTRICT 2

Defendant

Case No. 2006-02081-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

{1} Plaintiff, Art Ringel, is the owner of a residence in Lyons, Ohio, adjacent to State Route 120. Plaintiff has asserted the basement of his home flooded with rain water on December 29, 2005. According to plaintiff, the flooding in his basement was due to the deteriorated condition of a state owned and maintained drain tile on State Route 120. Plaintiff related, “under current conditions [his residence] basement drain will overflow after any rain or thaw.” Plaintiff further related defendant, Department of Transportation (“DOT”), has borne the responsibility for maintaining the road main drain tile on State Route 120 and has repaired the main tile on three separate occasions “since May 2005.” Plaintiff explained water drainage was generally good for a short period of time after DOT made repairs, but then problems arose with his basement flooding upon rainfall or a thaw. Plaintiff further explained the main drain tile under DOT’s maintenance responsibility is, “very old and deteriorated beyond its life.” Therefore, plaintiff insisted the condition of this drain tile causes flooding in his basement at any time of rain or thaw.

{2} Consequently, plaintiff filed this complaint seeking to recover \$700.00, his estimated out-of-pocket expenses for flood damage and associated costs related to the water problems at his residence. Plaintiff has contended he suffered these damages as a proximate cause of negligence on the part of DOT in maintaining a faulty and defective drain tile on State Route 120. The flood damage referenced in this claim occurred on December 29, 2005. Plaintiff pointed out water remained in his basement until January 7, 2006, when the basement area was cleaned up and dry. Plaintiff noted DOT personnel repaired the drain tile on State Route 120 on January 5, 2006, and water stopped flowing into his basement on the morning of January 7, 2006. The filing fee was paid.

{3} Defendant denied any maintenance practice or omission on the part of DOT caused plaintiff's flood damage. Defendant submitted photographs (taken March 14, 2006) depicting State Route 120 and adjacent land near plaintiff's residence. These photographs were taken a day after .50 inches of rain fell on the area. As defendant pointed out the photographs show "there is no standing water by the property, or near the roadway." Defendant suggested, "[i]f plaintiff's allegation is correct, and the deteriorated tile drainage is causing flooding after rain or thaw, then [the photographs would depict] standing water near the roadway." Defendant related plaintiff changed the landscape of his property by adding a pond to his backyard (photograph submitted). Defendant asserted DOT engineers surmised the addition of this pond on plaintiff's property could be the cause of plaintiff's basement flooding. Defendant argued plaintiff failed to produce sufficient proof his basement flooding was proximately caused by any negligent act or omission on the part of DOT. Defendant contended plaintiff failed to supply the requisite expert opinion to move his claim forward.

{4} 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, ¶18 citing *Menifee v. Ohio*

Welding Products, Inc. (1984), 15 Ohio Misc. 3d 75, 77. A breach of duty can be found only if defendant's interference with surface 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, adopting 4 Restatement on Torts 2d (1979), 146, Section 833.

{5} Plaintiff claimed defendant maintained a deteriorated drain tile that ultimately caused flooding in his basement upon rain and thaw. As a necessary element of his particular claim, plaintiff was required to prove proximate cause of his damage by a preponderance of the evidence. See, e.g. *Stinson v. England* (1994), 69 Ohio St. 3d 451. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51.

{6} "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 the 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, at 160 quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309. 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*, supra, at 454. Plaintiff, by not supplying the requisite expert testimony to state a prima facie claim has failed to meet his burden of proof. See *Ryan v. Ohio Department of Transportation*, 2003-09297-AD, 2004-Ohio-900. Plaintiff has failed to prove DOT's drain tile maintenance proximately caused the damage claimed. See *Wasilewski v. Ohio Department of Transportation*, 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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Art Ringel
8271 SR 120
Lyons, Ohio 43533

Plaintiff, Pro se

Gordon Proctor, Director
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1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa

[Cite as *Ringel v. Ohio Dept. of Transp.*, 2006-Ohio-7279.]

8/22

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