

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

OHIO EDISON COMPANY

Plaintiff

v.

THE OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-02528-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Ohio Edison Company, has alleged its equipment was damaged on or about June 24, 2004, by employees of defendant, Department of Transportation (“DOT”), during excavation operations along State Route 82 in Portage County near milepost 7.55. Plaintiff asserted a piece of equipment described as an anchor rod was broken by DOT personnel during the course of digging roadside ditches along State Route 82.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$667.09, the total cost of repairing its equipment, which plaintiff contended was damaged as a result of negligence on the part of DOT personnel conducting roadside ditch digging operations on June 24, 2004. The filing fee was paid.

{¶ 3} 3) Defendant denied any liability in this matter. Although defendant acknowledged DOT employees were working on June 24, 2004, no DOT crews were scheduled for work assignments on State Route 82. Furthermore, all DOT personnel who operated ditch digging equipment were off on June 24, 2004. DOT maintenance records were submitted to show no employees were performing digging work on State Route 82 on June 24, 2004. Maintenance assignments on State Route 82 on June 24, 2004, included clearing roadway, medians, curbs, and gutters, and signal inspections and relampings. These maintenance projects were not conducted near milepost 7.55, the site of plaintiff’s property damage. Defendant contended plaintiff failed to produce

evidence to establish conduct on the part of DOT caused the damage claimed.

{¶ 4} 4) In its response to defendant's investigation report, plaintiff stated its field employee, Al McRichie, was present at the location of the incident to repair the damage done to plaintiff's equipment. Plaintiff related that while repairs were being made to the broken anchor rod, a DOT marked vehicle with three occupants stopped on State Route 82. Plaintiff further related the DOT vehicle's driver talked with McRichie and told him DOT employees were digging roadside ditches and while engaged in that work broke plaintiff's equipment. Plaintiff also claimed the DOT vehicle driver informed McRichie to send the equipment repair bill to the DOT office in Summit County for payment.

{¶ 5} 5) On August 31, 2006, defendant filed a motion for leave to file a reply to plaintiff's response. There is sufficient evidence in the claim file to make a decision in this matter without a reply from defendant. Accordingly, defendant's motion for leave is denied.

CONCLUSIONS OF LAW

{¶ 6} Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723. Additionally, defendant has a duty to exercise reasonable care in conducting its roadside construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. When conducting construction projects, defendant's personnel must operate equipment in a safe manner. *State Farm Mutual Ins. v. Department of Transportation* (1998), 97-11011-AD.

{¶ 7} For plaintiff to prevail on a claim of negligence, it must prove, by a preponderance of the evidence, that defendant owed it a duty, that it breached that

duty, and that the breach proximately caused the injuries claimed. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio Misc. 3d 75, 77. Plaintiff has the burden of proving, by a preponderance of the evidence, that it suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 1981, approved and followed.

{¶ 8} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to it or that its property damage was proximately caused by defendant's negligence. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to its equipment. *Hall v. Department of Transportation* (2000), 99-12863-AD. Plaintiff failed to show the property damage was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

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

OHIO EDISON COMPANY

Plaintiff

v.

THE OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-02528-AD

Daniel R. Borchert
Deputy Clerk

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:

Thomas E. Lammert
22120 First National Tower
Akron, Ohio 44308

Attorney for Plaintiff

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/laa
8/22
Filed 9/29/06
Sent to S.C. reporter 6/21/07