

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

[REDACTED], as administrator of  
the estate of [REDACTED] and as  
guardian of J.H. and T.H.,

*Plaintiff,*

v.

MARTIN-ROBBINS FENCE COMPANY,  
GEORGIA DEPARTMENT OF  
TRANSPORTATION, ARCADIS U.S.,  
INC. and JOHN DOES 1-10,

*Defendants.*

Civil Action File No.: [REDACTED]

[REDACTED] and [REDACTED]

*Plaintiffs,*

v.

GEORGIA DEPARTMENT OF  
TRANSPORTATION, MARTIN-  
ROBBINS FENCE COMPANY, and  
ARCADIS U.S., INC.

*Defendants.*

Civil Action File No.: [REDACTED]

**ORDER DENYING DEFENDANT GEORGIA DEPARTMENT OF  
TRANSPORTATION’S MOTION TO DISMISS FOR  
LACK OF SUBJECT MATTER JURISDICTION**

This case comes before the Court on Defendant Georgia Department of Transportation’s (“GDOT”) Motion to Dismiss for Lack of Subject Matter Jurisdiction. After due consideration, and with the benefit of a hearing, the Court DENIES the Motion.

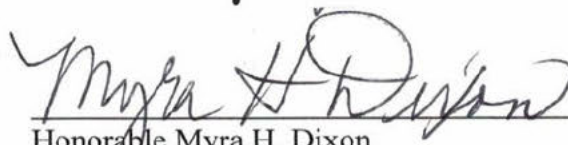
GDOT seeks the dismissal of Plaintiffs' claims, arguing that sovereign immunity has not been waived based on the "inspection" and "licensing" exceptions to the GTCA.<sup>1</sup> However, because (1) GDOT owned the subject guardrail, (2) GDOT should have been inspecting the guardrail, and (3) an inspection should have revealed the hazard at issue, the Court concludes that the "inspection" exception to the waiver of sovereign immunity does *not* apply. Because the "inspection" exception does not apply, GDOT's immunity is waived, and it can validly be sued.

Likewise, the Court finds that Plaintiffs' claims against GDOT are based on GDOT's *own* negligence – i.e., Plaintiffs' claims against GDOT are based on GDOT's own failure to identify or repair guardrail that had been nonfunctional for months. The Court further finds that GDOT's alleged liability is *not* rooted in its decisions to issue the contracts or its failure to terminate the contracts after months of alleged noncompliance. *Cox*, 246 Ga. App. at 224. Thus, because Plaintiffs' claims are based on GDOT's *own* negligent maintenance – i.e., GDOT's failure to identify or repair its own guardrail – the "licensing exception" is not applicable.

Finally, The Court finds that Plaintiff has come forward with evidence from which a jury could conclude that GDOT negligently maintained the subject guardrail.

Accordingly, for the foregoing reasons, Defendant GDOT's Motion to Dismiss is DENIED.

IT IS SO ORDERED, this 15<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_  
Honorable Myra H. Dixon  
Judge, State Court of Fulton County

<sup>1</sup> GDOT also raised the "roadway design" exception, but Plaintiffs contend they do not bring a roadway design claim.