

[Cite as *Hare v. Ohio Dept. of Transp.*, 2017-Ohio-8074.]

MILDRED HARE

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2016-00669-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On September 9, 2016, plaintiff Mildred Hare (hereinafter “plaintiff”) filed a complaint in this Court against the Ohio Department of Transportation (hereinafter “ODOT”). Plaintiff resides at 16520 State Route (“SR”) 309, Kenton, Ohio 43326 and this portion of SR 309 is maintained by ODOT. Plaintiff claims that on June 17, 2014, ODOT replaced the drainage tile along SR 309 in front of her home and failed to reconnect the drainage tile from her downspouts. According to the complaint, ODOT’s omission caused approximately five inches of flooding in her basement on July 27, 2015 and again on June 23, 2016. Both times, various articles of plaintiff’s property were damaged and she had to pay for the basement to be pumped, dried, disinfected, and mold remediation. The total cost of these two flooding events amounted to \$9,153.84. After the second flooding, plaintiff hired a contractor to trace her downspout tiles to locate any problems. The contractor placed dye in the downspout tiles and after two days, he located the dye in the ditch in front of her house. At that time, the contractor dug the ditch and found that plaintiff’s drain tile was not connected to the main tile that runs through the ditch along the highway.

{¶2} ODOT filed an investigation report on November 22, 2016. First, ODOT requests the Court to adjust the prayer amount to \$7,053.40, because it believes the documentation only supports that amount. Next, ODOT explains that it regularly conducts maintenance on SR 309 near the area of plaintiff’s incident and between February 27, 2015 through June 23, 2016, it conducted 445 maintenance operations.

Therefore, it is ODOT's position that any defect or blockage in the main drainage tile that runs along the front of plaintiff's property would have been immediately discovered and repaired. ODOT also notes that it received no complaints regarding drainage on SR 309 from February 27, 2015 through June 23, 2016. As such, ODOT concluded that plaintiff has failed to provide evidence showing that it maintains its highways negligently.

{¶3} ODOT also argues that if this Court finds that the main drainage tile caused the flooding on plaintiff's property, then it should balance the harm to her (occasional flooding to property) in comparison to the harm to the state and taxpayers (increased water on the roadway or significant re-designing a project to move water elsewhere at some substantial dollar figure. Lastly, ODOT states that even if its actions or inactions exacerbated the flooding problem, plaintiff was in the best position to divert the water flow and mitigate any damages. ODOT suggests plaintiff could have dug a ditch, created earthen or other berms to divert the water from her property or created water retention areas to hold excess water in the event of a storm. In sum, ODOT maintains that plaintiff has failed to introduce evidence demonstrating that ODOT's conduct was more likely than not the cause of the water backup.

{¶4} To prevail under a theory of negligence, plaintiff must prove by a preponderance of the evidence that ODOT owed her a duty, that ODOT's acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 8, citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). Pursuant to R.C. 5501.11(A), ODOT is responsible for establishing "state highways on existing roads, streets, and new locations and [to] construct, reconstruct, widen, resurface, maintain, and repair the state system of highways and the bridges and culverts thereon." ODOT's duty to maintain SR 309 includes a duty to clean and maintain the adjacent ditches which provide drainage for the roadway. See 1981 Ohio Op. Atty. Gen. No. 39, paragraph three of the syllabus.

{¶5} ODOT may be held liable for damage caused by defects, or dangerous conditions, on state highways where it has notice of the condition, either actual or constructive. *McClellan v. Ohio Dept. of Transp.*, 34 Ohio App.3d 247 (10th Dist.1986), paragraph one of the syllabus. “Actual notice exists where, from competent evidence, the trier of fact can conclude the pertinent information was personally communicated to, or received by, the party.” *Kemer v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 09AP-248, 2009-Ohio-5714, ¶ 21, citing *In re Fahle’s Estate*, 90 Ohio App. 195, 197 (6th Dist.1950). Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *Id.* at ¶ 24. However, proof of notice of a damage-causing condition is not necessary when defendant’s own agents actively caused such condition. *Bello v. City of Cleveland*, 106 Ohio St. 94 (1922), paragraph one of the syllabus.

{¶6} Here, the evidence demonstrates ODOT did not have actual or constructive notice about the flooding that caused damage to plaintiff’s property. Plaintiff has made no allegation that anyone, including herself, provided actual notice to ODOT about the flooding until after the second flooding on June 23, 2016. Moreover, the evidence shows that ODOT performed four hundred forty-five (445) maintenance operations on SR 309 near plaintiff’s property from February 27, 2015 through June 23, 2016. It follows that any defect or obstruction in main drainage tile in front of plaintiff’s property would have been cleared by ODOT upon discovery. Furthermore, while plaintiff states her home was never flooded prior to ODOT’s 2014 construction, unfortunately, she has not provided the Court with any evidence from which it could presume that ODOT had constructive notice that its agents failed to connect her drainage tile to the main tile during the construction.

{¶7} Accordingly, the Court finds that plaintiff has failed to prove ODOT committed a breach of its duty to maintain the SR 309 drainage tile and judgment is recommended in ODOT’s favor.

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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 absorbed by the Court.

MARK H. REED
Clerk

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