[Cite as *Meathrel v. Ohio Dept. of Transp.*, 2020-Ohio-2933.]

WILLIAM MEATHREL Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2019-00901AD Deputy Clerk Daniel R. Borchert MEMORANDUM DECISION

{¶1} William Meathrel ("plaintiff") filed this claim against the Ohio Department of Transportation ("ODOT"), to recover damages which occurred on February 24, 2019, when his 2014 Honda Odyssey was struck by an ODOT orange sign, while traveling on Interstate Route ("IR") 75 North in Montgomery County, Ohio. This road is a public road maintained by ODOT. Plaintiff's vehicle sustained damages in the amount of $2,173.51. Plaintiff utilized his auto insurance with Essurance Property and Casualty. The insurance carrier paid $1,173.51, while plaintiff was responsible for the $1,000 deductible. Plaintiff submitted the $25.00 filing fee.

{¶2} In order to recover on a claim for roadway damages against ODOT, Ohio law requires that a motorist/plaintiff prove *all* of the following:

{¶3} That the plaintiff's motor vehicle received damages as a result of coming into contact with a dangerous condition on a road maintained by ODOT.

{¶4} That ODOT knew or should have known about the dangerous road condition.

{¶5} That ODOT, armed with this knowledge, failed to repair or remedy the dangerous condition in a reasonable time.

{¶6} In this claim, the court finds that the plaintiff did prove that his vehicle received damages and that those damages occurred as a result of the plaintiff's vehicle coming into contact with a dangerous condition on a road maintained by ODOT.

{¶7} In order for a plaintiff to recover in any suit involving injury proximately caused by roadway conditions including debris, plaintiff must prove that either: 1) defendant had actual or constructive notice of the debris condition and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation*, 75-0287-AD (1976). Plaintiff has not provided any evidence to prove that ODOT had actual notice of the damage-causing condition. Therefore, in order to recover, plaintiff must offer proof of defendant's constructive notice of the condition as evidence to establish negligent maintenance.

{¶8} Constructive notice is defined as "(n)otice arising from the presumption of law from the existence of facts and circumstances that a party has a duty to take notice of...Notice presumed by law to have been acquired by a person and thus imputed to that person." (Black's Law Dictionary at 1090 8th Ed. 2004.) In order for there to be a finding of constructive notice, plaintiff must prove, by a preponderance of the evidence, that sufficient time has elapsed after the dangerous condition appears so that under the circumstances defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation,* 78-0126-AD (1978); *Gelarden v. Ohio Dept. of Transp., Dist. 4*, Ct. of Cl. No. 2007-02521-AD, 2007-Ohio-3047.

{¶9} In the Investigation Report, ODOT stated that the location of the incident was on IR 75 North in Montgomery County, between mile markers 64 and 65. This section of the roadway has an average daily traffic count of 75,558 vehicles. Despite this volume of traffic, ODOT had received no notice of any dislodged orange signs on this section of the road, thus the court is unable to find that ODOT knew about the sign. Within the past six months, ODOT had also conducted five hundred fifty-seven (557) maintenance operations on IR 75 North in Montgomery County without discovering any dislodged signs. If a dislodged sign had existed for any appreciable length of time on this section of the roadway, it is probable that it would likely have been discovered by

ODOT's work crews. Thus, the court cannot find that ODOT should have known about this dislodged sign. It is thus likely that this ODOT orange sign had only recently traveled into the roadway and that ODOT had not been notified regarding this hazard.

{¶10} Plaintiff has not produced any evidence to indicate the length of time that the debris was in the roadway prior to his vehicle striking it in support of this claim. Plaintiff has not shown that defendant had actual notice of the condition. Also, the trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented which shows the time that the debris was in the roadway. *Spires v. Ohio Highway Department*, 61 Ohio Misc.2d 262, 577 N.E.2d 458 (Ct. of Cl. 1988). There is no indication that defendant had constructive notice of this debris.

{¶11} Under Ohio law, the burden of proof in civil claims like this one rests on the plaintiff. The plaintiff, to succeed on the claim, must prove that ODOT either knew or reasonably should have known about the debris in the roadway. Plaintiff has not met this burden.

{¶12} Plaintiff did respond to defendant's Investigation Report. Plaintiff asserts that winds in excess of 57 miles per hour caused the sign to blow into his vehicle. However, it is well-settled under Ohio law that if an "Act of God" is so unusual and overwhelming as to do damage by its own power, without reference to and independently of any negligence by defendant, there is no liability. *City of Piqua v. Morris*, 98 Ohio St. 42, 49, 120 N.E. 300 (1918). Plaintiff has failed to produce sufficient evidence to establish defendant acted in a negligent manner or that defendant committed a breach of any duty owed to plaintiff. The evidence shows that there were high winds on the day of plaintiff's incident. Plaintiff acknowledged his car was struck by a wind-blown sign. Plaintiff has not provided any evidence to suggest the sign was in disrepair or improperly installed. See *Donely v. Ohio Department of Transportation*, 2009-08292-AD (2009).

{¶13} Finally, the law in Ohio is that ODOT is not an absolute insurer of a motorist's safety on the highway. *Kniskern v. Township of Somerford*, 112 Ohio App.3d 189, 678 N.E.2d 273 (10th Dist. 1996); *Rhodus v. Ohio Dept. of Transp.*, 67 Ohio App.3d 723, 588 N.E.2d 864 (10th Dist. 1990). The department is only liable for damage when the court finds that it was negligent. This, the court is unable to do.

{¶14} Since the plaintiff is unable to prove that the defendant knew or should have known about this dangerous condition, the claim must fail.

WILLIAM MEATHREL Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2019-00901AD Deputy Clerk Daniel R. Borchert ENTRY OF ADMINISTRATIVE DETERMINATION

{¶15} 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 the defendant. Court costs shall be absorbed by the court.

DANIEL R. BORCHERT
Deputy Clerk

Filed 2/21/20
Sent to S.C. reporter 5/14/20