

[Cite as *McKenna v. Ohio Dept. of Transp.*, 2002-Ohio-4553.]

IN THE COURT OF CLAIMS OF OHIO

TIMOTHY J. MCKENNA
1736 Loisdale Court
Cincinnati, Ohio 45255

:
:
: Case No. 2001-10859-AD

Plaintiff

: MEMORANDUM DECISION

v.

OHIO DEPARTMENT OF
TRANSPORTATION

:
:
:

Defendant

.....

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

.....

FINDINGS OF FACT

{¶1} 1) On August 27, 2001, at approximately 9:00 a.m., plaintiff, Timothy J. McKenna, was driving north on Interstate 75 after entering from Fort Washington Way (U.S. Route 50 West) in Hamilton County, when his automobile struck an orange construction barrel rolling on the traveled portion of the roadway. The collision caused substantial body damage to plaintiff's vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,212.98, his cost of automotive repair, which he contends he incurred as a result of negligence on the part of defendant in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge of a displaced barrel in the traveled portion of the roadway. Defendant has no explanation how the barrel was displaced.

{¶4} 4) Plaintiff has failed to introduce any evidence indicating that defendant had knowledge of the barrel's positioning in the traveled portion of the roadway. Further, plaintiff has failed to introduce evidence showing the length of time the obstruction existed in the roadway.

CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶7} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant has actual or constructive notice of the barrel 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* (1976), 75-0287-AD.

{¶8} 4) In the instant case, plaintiff has failed to prove, by a preponderance of the evidence, that defendant had either actual or constructive notice of the road obstruction. Further, there is no evidence in the record to suggest that defendant negligently positioned the orange barrel in the roadway. Consequently, plaintiff's claim is denied.

{¶9} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶10} IT IS ORDERED THAT:

{¶11} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶12} 2) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

4/22

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