[Cite as *Riddle v. Ohio Dept. of Transp.*, 2002-Ohio-4563.]

IN THE COURT OF CLAIMS OF OHIO

JUDY A. RIDDLE 2730 St. Rt. 222, Lot #74 Bethel, Ohio 45106	:	Case No. 2002-01951-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

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FINDINGS OF FACT

{¶1} On January 23, 2002, at approximately 5:30 a.m., plaintiff, Judy A. Riddle, was traveling east on State Route 125 in Brown County when her automobile struck some rock debris which had fallen from a hillside adjacent to the roadway. The relative location of the incident was near milepost 8.30 on a four lane section of State Route 125. Plaintiff characterized the debris her automobile struck as "a busted bunch of rock on the highway." Two tires on plaintiff's car were totally destroyed as a result of striking the rock debris. Consequently, plaintiff filed this complaint seeking to recover $191.27, the cost of two replacement tires. Plaintiff indicated she incurred these expenses as a proximate cause of negligence on the part of defendant, Department of Transportation, in failing to prevent rock falls. Plaintiff

submitted the filing fee with the complaint.

{¶2} Defendant denied any liability in this matter. Defendant explained a "Falling Rock" sign was positioned on the shoulder area of eastbound State Route 125 at the 7.17 milepost to warn motorists of possible roadway danger. Additionally, defendant related regular inspections of State Route 125 were conducted to ascertain potential trouble areas where rocks were likely to fall from the adjacent hillside. According to defendant, an inspection was performed on January 10, 2002 and no imminently precarious conditions were discovered on the hillside near State Route 125. Furthermore, defendant indicated an area between 26 and 30 feet from the toe slope of the hillside to the pavement edge of State Route 125 was maintained to catch falling rocks. Based on the described precautionary measures taken, defendant has contended it did not act negligently in maintaining the roadway. Therefore, defendant asserted plaintiff has failed to show her property damage was the result of any negligent act or omission on defendant's part.

CONCLUSIONS OF LAW

{¶3} Defendant has the duty to maintain its highways 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. Generally, defendant has a duty to post warning signs notifying motorists of highway defects or dangerous conditions. *Gael v. State* (1979), 77-0805-AD. The facts of the instant claim do not establish defendant breached any duty in respect to signage or roadway maintenance.

{¶4} Therefore, in order for plaintiff to recover under a negligence theory she must prove, by a preponderance of the evidence, defendant had actual or constructive notice of the rocky

debris and failed to respond in a reasonable time or responded in a negligent manner. *Denis v. Department of Transportation* (1976), 75-0287-AD; *O'Hearn v. Department of Transportation* (1985), 84-03278-AD. No facts have shown defendant had actual notice of the rock fall which proximately caused plaintiff's damage. However, both defendant and plaintiff, in a general sense, had notice of rock falls occurring on the portion of State Route 125 in question. Nevertheless, plaintiff has failed to prove, by a preponderance of the evidence, that defendant knew or should have known the particular rockslide which resulted in plaintiff's property damage was likely to occur on January 23, 2002. Plaintiff has failed to prove the particular rock face from which the rocky debris originated showed any signs of instability prior to January 23, 2002. The precautionary, inhibiting, and warning measures taken by defendant were adequate and did not fall below the standard of care owed to the traveling public. *Mosby v. Department of Transportation* (1999), 99-01047-AD.

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

{¶6} IT IS ORDERED THAT:

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

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

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DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
6/11
Filed 6/27/02
Jr. Vol. 710, Pg. 28
Sent to S.C. reporter 9/4/02