

[Cite as Hanak v. Ohio Dept. of Transp., 2002-Ohio-4619.]

IN THE COURT OF CLAIMS OF OHIO

JANE HANAK :
10501 Halcyon Drive :
Parma Heights, Ohio 44130 : Case No. 2002-03295-AD

Plaintiff : MEMORANDUM DECISION

v. :

STATE OF OHIO DEPT. OF :
TRANSPORTATION :

Defendant :

: : : : : : : : : : : : : : :

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

FINDINGS OF FACT

{¶1} 1) On March 4, 2002, plaintiff, Jane Hanak, was traveling east between State Road exit and the ramp for St. Rt. 176 on Interstate 480 in Cuyahoga County, when her van struck an orange traffic control cone laying on the traveled portion of the roadway. Plaintiff stated her van bumper and light were damaged as a result of striking the orange cone. Plaintiff indicated many orange cones were laying all over the roadway at the time of her incident.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$903.19, the cost of repairing her van, plus \$25.00 for filing fees. Plaintiff asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the orange cone was on the roadway prior to

plaintiff's incident. Defendant denied ownership of the orange cone that caused plaintiff's property damage.

{¶4} 4) On June 16, 2002, plaintiff submitted a response to defendant's investigation report. However, plaintiff did not submit any evidence establishing defendant as the owner of the damage-causing cone nor did she submit any evidence to indicate the length of time the orange cones were on the roadway surface prior to plaintiff's property damage occurrence.

{¶5} 5) On June 25, 2002, defendant filed a reply to plaintiff's response. Defendant again asserts it had no notice of the orange cone on the roadway.

CONCLUSIONS OF LAW

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

{¶7} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶8} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect 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.

{¶9} 4) There is no evidence defendant had actual notice of the orange cone.

{¶10} 5) The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the cone appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶11} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the orange

cone appeared, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶12} 7) No evidence has shown defendant had constructive notice of the damage-causing debris.

{¶13} 8) Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

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

{¶15} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

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6/10
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