

[Cite as *Workman v. Ohio Dept. of Transp.*, 2002-Ohio-4640.]

IN THE COURT OF CLAIMS OF OHIO

RALPH WORKMAN	:	
15732 Friend Avenue	:	
Maple Heights, Ohio 44137	:	Case No. 2002-04968-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPT. TRANSPORTATION	:	
DISTRICT 12	:	
Defendant	:	

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

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

FINDINGS OF FACT

{¶1} 1) On April 3, 2002, at approximately 5:30 p.m., plaintiff, Ralph Workman, was traveling south on Interstate 480 near Transportation Boulevard in Cuyahoga County when his automobile windshield was cracked by flying debris. According to plaintiff, the flying debris were pieces of gravel that were thrown from the roadway surface into the path of his vehicle by a truck traveling in front of plaintiff's car in an adjacent highway lane. The truck, which propelled the gravel like debris into the windshield of plaintiff's car, bore license plate number Ohio PCM 1235 and company name C & B Company.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$315.00, the cost of replacement windshield, plus \$25.00 for filing fee reimbursement. Plaintiff contended his car repair expense was

a result of negligence on the part of defendant, Department of Transportation, in failing to maintain the roadway.

{¶3} 3) Defendant denied liability based on the fact it had no knowledge of the roadway condition.

{¶4} 4) Plaintiff has not submitted any evidence indicating the length of time the gravel debris were on the roadway prior to his property damage occurrence.

CONCLUSIONS OF LAW

{¶5} Defendant has the duty to maintain its highway 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.

{¶6} In order to recover in any suit involving injury proximately caused by roadway conditions including debris, plaintiff must prove either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highway negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶7} Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Ohio Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶8} Plaintiff has not produced any evidence to indicate the length of time the debris condition was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the debris. Additionally, 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 debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of

the debris. Finally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway debris.

{¶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 in this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
7/26
Filed 8/16/02
Jr. Vol. 715, Pg. 162
Sent to S.C. reporter 9/4/02