

[Cite as *Ables v. Ohio Dept. of Transp.*, 2002-Ohio-5279.]

IN THE COURT OF CLAIMS OF OHIO

TRACY L. ABLES	:	
111 Moorewood Avenue	:	
Avon Lake, Ohio 44012	:	Case No. 2002-05891-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPT. OF TRANSPORTATION	:	
DISTRICT #12	:	
Defendant	:	
	:	: : : : : : : : : : : : : : :

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

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FINDINGS OF FACT

{¶1} 1) On May 16, 2002, at approximately 8:15 a.m., plaintiff Tracy L. Ables was traveling east on Interstate 90 near the West 117<sup>th</sup> exit in Cuyahoga County when a preceding motorist drove through a pile of stones in the roadway and propelled a large stone into the path of plaintiff's vehicle. The airborne stone struck the front of plaintiff's vehicle breaking a headlight and denting the body of the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$432.00 for automotive body repair, \$120.00 for car rental expenses, and \$150.00 for "inconvenience." Plaintiff contended she incurred these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant has denied liability based on the contention it had no knowledge of the pile of stones on the roadway prior to plaintiff's property damage occurrence.

{¶4} 4) On August 12, 2002, plaintiff submitted a response to the defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the pile of stones was on the roadway prior to the incident forming the basis of this claim.

#### 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) 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.

{¶7} 3) In order to recover on a claim of this type, 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 highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶8} 4) There is no evidence defendant had actual notice of the damage-causing pile of stones.

{¶9} 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 pile of stones appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the condition appears so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-

0126-AD.

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing pile of stones.

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

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

{¶14} IT IS ORDERED THAT:

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

{¶16} 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

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