

IN THE COURT OF CLAIMS OF OHIO

DREAMA MORGAN	:	
1656 St. Rt. 734	:	
Bloomington, Ohio 43106	:	Case No. 2002-10518-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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{¶1} Plaintiff, Dreama Morgan, asserted that her van's running board was damaged on September 6, 2002, as a result of a defective roadway condition on U.S. Route 62 located near the driveway entrance of a veterinary clinic. Plaintiff indicated the damage to her van occurred as she drove onto U.S. Route 62 from the clinic driveway. Plaintiff stated the highway surface of U.S. Route 62 was "torn up" because of road construction activity. According to plaintiff, the road construction had created a "very steep incline" at the particular area where the damage event happened. Plaintiff related, "while I was driving down the incline to exit I heard a loud thud." After hearing this "thud," plaintiff pulled over, examined her vehicle, and saw the right side running board was damaged. Consequently, plaintiff filed this complaint seeking to recover \$529.61, the cost of replacing the damaged running board.

Plaintiff contended she suffered this property damage as a proximate cause of negligence on the part of contractors of defendant, Department of Transportation. Plaintiff submitted the filing fee with the complaint.

{¶2} Defendant denied any liability in this matter. Defendant denied plaintiff's damage was proximately caused by a defective roadway condition maintained by its contractor. Defendant suggested plaintiff has failed to prove her property damage was caused by a roadway defect.

{¶3} Defendant has the duty to maintain its highways in a reasonably safe condition for the motor public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335.

{¶4} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD.

{¶5} Plaintiff, in the instant action, has presented a claim grounded in nuisance. To constitute a nuisance, the thing or act complained of must either cause injury to the property of another, obstruct the reasonable use or enjoyment of such property, or cause physical discomfort to such person. *Dorrow v. Kendrick* (1987), 30 Ohio Misc. 2d 40.

{¶6} "[A] civil action based upon the maintenance of a qualified nuisance is essentially an action in tort for the negligent maintenance of a condition, which, of itself, creates an unreasonable risk of harm, ultimately resulting in injury. The dangerous condition constitutes the nuisance. The action for damages is predicated upon carelessly or negligently allowing such condition to exist." *Rothfuss v. Hamilton Masonic Temple Co.* (1973), 34 Ohio St. 2d 176, 180.

{¶7} Under a claim of qualified nuisance, the allegations of nuisance merge to become a negligence action. *Allen Freight Lines, Inc. v. Consol. Rail Corp.* (1992), 64 Ohio St. 3d 274, 595 N.E. 2d 855.

{¶8} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Stevens v. Indus. Comm'n.* (1945), 145 Ohio St. 198, approved and followed. Plaintiff has failed to present sufficient evidence to establish her property damage was caused by any negligent act or omission on the part of defendant's contractor. Consequently, her 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.

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DANIEL R. BORCHERT  
Deputy Clerk

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