

[Cite as *Hynes v. Ohio Dept. of Transp.*, 2003-Ohio-1990.]

IN THE COURT OF CLAIMS OF OHIO

JEFFREY E. HYNES :
 :
 Plaintiff : CASE NO. 2002-05263
 :
 v. : DECISION
 :
 OHIO DEPARTMENT OF : Judge Fred J. Shoemaker
 TRANSPORTATION :
 :
 Defendant
 :
 :::::::::::::::

{¶1} On February 24, 2003, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff has not filed a memorandum in opposition to defendant’s motion for summary judgment. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor. ***” See, also, *Williams v.*

First United Church of Christ (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is not disputed that plaintiff's vehicle struck some unidentified debris on I-480 in Cleveland, Ohio on or about 2:00 p.m. on May 15, 2002, and that plaintiff's vehicle sustained damage as a result. However, in order for liability to attach to defendant for damages caused by debris upon the roadway, plaintiff must demonstrate that defendant had actual or constructive notice of the existence of such debris. See *McLellan v. Ohio Dept. of Transportation* (1986), 34 Ohio App.3d 247; *Knickel v. Ohio Dept. of Transportation* (1976), 49 Ohio App.2d 335; *Pearson v. Ohio Dept. of Transportation* (Nov. 6, 1997), Court of Claims No. 96-06773.

{¶5} In plaintiff's answer to defendant's first set of interrogatories, plaintiff responded as follows:

{¶6} "26. State with specificity the reasons you feel the Ohio Department of Transportation is responsible for your accident and produce all documents used in answering this request.

{¶7} "ANSWER If I was the first person this metal peice hit and I notified the O.D.O.T. I feel they should pay. The damage is done to my car and not to some one else. It is possiable that this could have saved them money. They did not know about till I told them what happened. Because it happened to me first. I have no documents to support this answer because this is reality."
[sic]

{¶8} Additionally, defendant filed the affidavit of Edwin P. Bais who has been defendant's District 12 Transportation Technician I from the year 2000 to the present. Bais' affidavit contains the following averments:

{¶9} "****

{¶10} "6. I reviewed the correspondence file, the radio/telephone log from the ODOT District 12 Independence Yard, and the file on other Court of Claims Cases for three months prior to May 15, 2002 for information pertaining to this claim.

{¶11} "7. The results of this search revealed no related complaints, notices or responses to this accident.

{¶12} “8. I reviewed the maintenance history for the area in question and found 219 occurrences of crews doing various forms of maintenance and patrols in the area in question during the six months prior to the incident.

{¶13} “9. None of these crews reported the presence of road debris in the area where Mr. Hynes’ vehicle was damaged.

{¶14} “10. The ODOT Road Crewzers drove this area on every weekday for a total of 97 times in the six months prior to this incident.

{¶15} “11. The ODOT Litter Patrols drove this area 73 times in the six months prior to this incident.

{¶16} “12. The ODOT Yard Supervisor and yard personnel also patrol this area regularly.

{¶17} “13. A copy of the log sheet from our after hours answering company, attached as Exhibit A, shows that some tire tread debris was picked up in this same area on the same day.

{¶18} “14. Exhibit A does not show any mention of a steel bar or any metal debris in this area. ****” [sic]

{¶19} There is also no allegation or evidence that the debris was left on the highway by defendant.

{¶20} The Tenth District Court of Appeals has stated:

{¶21} “The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party’s claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1,2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00Ap-1110.” *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLiberia, Lyons & Bibbo et al.* (March 31, 2003), Franklin App. No. 01AP-1137.

{¶22} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant did not have any prior notice of the debris that struck plaintiff's vehicle. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law.

{¶23} Defendant's motion for summary judgment is hereby GRANTED and judgment is rendered in favor of defendant.

FRED J. SHOEMAKER
Judge

Entry cc:

Jeffrey E. Hynes
20431 Westport Avenue
Euclid, Ohio 44123

Plaintiff, Pro se

Tracy M. Greuel
Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

Attorney for Defendant

LP/cmd
Filed 4-11-2003
To S.C. reporter 4-18-2003