

IN THE COURT OF CLAIMS OF OHIO

ROBERT E. BURNS : Case No. 2002-11166-AD  
Plaintiff : MEMORANDUM DECISION  
v. :  
OHIO DEPT. OF TRANSPORTATION :  
Defendant :

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

FINDINGS OF FACT

{¶1} 1) On November 29, 2002, plaintiff, Robert E. Burns, was traveling on Interstate 71 near milepost 210 in Medina County, when his automobile struck a box laying on the traveled portion of the roadway. Plaintiff stated his automobile bumper, air conditioner condenser, and supporting hardware were damaged as a result of striking the box.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,132.96, the cost of repairing his automobile, plus filing fees. Plaintiff asserted he 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 defective condition (box) was located on the roadway prior to plaintiff's incident.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the box was laying on the roadway surface prior to his property damage occurrence.

CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep the 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 defect (box) 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 box.

{¶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 defective condition (box) 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 dangerous condition (box) 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 box.

{¶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

Entry cc:

Robert E. Burns  
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Plaintiff, Pro se.

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For Defendant

RDK/laa  
3/28  
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