

[Cite as *Johnston v. Ohio Dept. of Transp.*, 2003-Ohio-2263.]

IN THE COURT OF CLAIMS OF OHIO

HELEN L. JOHNSTON	:	
Plaintiff	:	
v.	:	CASE NO. 2002-08751-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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

{¶1} On June 5, 2002, plaintiff, Helen L. Johnston, suffered personal injury when she slipped and fell while walking on the berm area of State Route 151 about a mile west of Scio in Harrison County. Specifically, plaintiff fractured her wrist after falling into a ditch adjacent to the roadway. Plaintiff described the injury incident as follows: “I walked to close to side of road slipped on gravel & grass fell down over the side of road in a ditch.” [sic]

{¶2} Plaintiff has contended defendant, Department of Transportation, is somehow liable for her wrist injury. Plaintiff filed this complaint seeking to recover \$935.20, the medical expense incurred for treating her injury. On October 2, 2002, plaintiff submitted the filing fee. Plaintiff did not offer any evidence to establish her slip and fall was caused by either a defective condition on the traveled portion of State Route 151 or a condition of the roadway right-of-way berm area.

{¶3} Defendant denied any liability in this matter. Defendant asserted State Route 151 is not intended for pedestrian traffic. Defendant submitted a photograph depicting the roadway area where plaintiff’s injury event occurred. The roadway berm areas appear to be free of any defective or hazardous conditions. Defendant asserted plaintiff has failed to

produce any evidence showing her injury was proximately caused by any act or omission relating to highway maintenance. Defendant argued plaintiff has failed to establish defendant breached any duty of care to her which resulted in her slip and fall injury.

{¶4} Defendant is not an insurer of the safety of the highway under its jurisdiction. It has only a duty of ordinary care, to maintain the highway in a reasonably safe condition for those travelers who are exercising reasonable and ordinary care for their own well-being. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335.

{¶5} R.C. 4511.50(B) provides that “[w]here a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.” Plaintiff should have been using the berm or shoulder area of State Route 151 as a walkway.

{¶6} 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. In the instant action plaintiff has failed to prove defendant breached any duty owed to her which resulted in her suffering personal injury. The roadway and shoulder area where plaintiff slipped and fell were free of any defects and were not hazardous. It appears the sole cause of plaintiff’s injury was her own negligence. Consequently, this claim is denied.

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

{¶8} IT IS ORDERED THAT:

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

{¶10} 2) Court costs are assessed against plaintiff.

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DANIEL R. BORCHERT  
Deputy Clerk

Order cc:

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For Defendant

RDK/laa  
4/4  
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