

based on the fact it had no knowledge of an orange marker disengaging and flying from its anchorage. Defendant has denied plaintiff's property damage was proximately caused by any negligent act or omission on the part of its contractor. Defendant related a fax was received from plaintiff regarding a repair estimate for the damage to his vehicle. According to defendant the actual expense for repairing plaintiff's car amount to \$627.29.

{¶3} Plaintiff filed a response. Plaintiff asserted his car was damaged by an orange marker maintained by defendant's contractor. Plaintiff did not submit any evidence establishing the cost of repair to his vehicle.

{¶4} Defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Additionally, defendant has a duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. This court, as the trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, the court concludes sufficient evidence has been presented to show defendant breached the duty of care owed to plaintiff and this breach proximately caused plaintiff's damage. Nailed down markers usually do not fly from anchorages without negligence involved. Therefore, defendant is liable to plaintiff in the amount of \$627.29, plus the \$25.00 filing fee.

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

{¶6} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶7} 2) Defendant (Department of Transportation) pay plaintiff (Anthony G. Scruse) \$652.29 and such interest as is allowed by law;

{¶8} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Anthony G. Scruse
1757 West Wittenberg Blvd.
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Plaintiff, Pro se

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For Defendant

DRB/tad
4/15
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