

[Cite as *Gentile v. Ohio Dept. of Transp., Dist. 4, 2003-Ohio-2604.*]

IN THE COURT OF CLAIMS OF OHIO

THOMAS A. GENTILE :
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 Plaintiff :
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 v. : CASE NO. 2002-07720-AD
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 OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
 DISTRICT 4 :
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 Defendant :
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{¶1} On June 6, 2002, at approximately 6:00 A.M., plaintiff Thomas A. Gentile was traveling north on State Route 11 when he decided to turn onto the entrance ramp to State Route 82 West. Plaintiff explained the pavement on the ramp had been ground down to prepare for repaving and a butt joint had been cut where the repaving was to begin. Over an inch of rain had fallen in the area during the preceding twenty-four hour period causing rainfall accumulation to partially fill the roadway entrance ramp cut portion. Plaintiff stated as he drove over this cut in the roadway ramp the right front tire rim of his vehicle was damaged and the front end of the car was thrown out of alignment.

{¶2} Plaintiff suggested his automobile property damage was proximately caused by negligence on the part of defendant, Department of Transportation in creating a hazardous condition on the State Route 82 West entrance ramp. Consequently, plaintiff filed this complaint seeking to recover \$579.96, the cost of automotive repair he incurred resulting from the June 6, 2002 incident. Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant acknowledged the pavement on the roadway ramp where plaintiff's property damage occurred had been ground down to prepare for repaving. However, defendant denied any negligent act or omission on its part caused plaintiff's

damage. Defendant related its repair crews performed preliminary operations on the ramp on June 4 and June 5, 2002, by grinding butt joints. Repavement was scheduled to proceed on the evening of June 5, 2002, but was postponed due to rain in the area. Defendant stated the butt joints on the entrance ramp were ground in a triangular wedge. Defendant described this ground out wedge as "10' long by 1-1/2" deep at one end tapering to zero at the other end of the wedge." According to defendant, "[a]sphalt grindings were placed inside the wedge for a length of about 1 foot to provide a small ramp," to act as a shock absorber when motorists passed over the constructed wedge area. Defendant has contended this wedge construction on the roadway ramp acted as a sufficient measure to discharge its duty owed to motorists.

{¶4} Additionally, defendant represented signs had been erected ahead of the ramp and on the ramp to act as warnings of roadway conditions. Although it is unclear when these signs were in position, defendant related a 48" Bump sign was placed on the left shoulder area ahead of the ramp and SLIPPERY WHEN WET signs were positioned on both sides of the ramp. Defendant asserted the placement of the signs is additional evidence that due care was utilized to provide ample warning of roadway conditions.

{¶5} Plaintiff filed a response insisting defendant is liable for his property damage. Plaintiff argued passing traffic and heavy rainfall had, by the morning of June 6, 2002, eroded the wedge erected on the entrance ramp on June 4, 2002. Therefore, plaintiff asserted a hazardous condition was created on the entrance ramp which resulted in damage to his vehicle.

{¶6} In order for plaintiff to prevail upon his claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. The Ohio Department of Transportation (ODOT) has the duty to maintain the system of highways free from unreasonable risk of harm by exercising ordinary reasonable care. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42. However, ODOT is not an insurer of the safety of its highways. *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 730.

{¶7} Further, defendant must exercise due diligence in the maintenance and repair

of the highways. *Hennessey v. State of Ohio Highway Dept.* (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.

{¶8} 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, or cause physical discomfort to such person. *Dorrow v. Kendrick* (1987), 30 Ohio Misc. 2d 40.

{¶9} “[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), Ohio St. 2d 176, 180.

{¶10} 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.

{¶11} In the instant claim, the court concludes defendant maintained a nuisance condition on the roadway for traffic. Nuisance, defined in this context, is a condition within defendant’s control that creates a danger for the ordinary traffic on the regularly traveled portion of the road. See *Harris v. Ohio Dept. of Transp.* (1992), 83 Ohio App. 3d 125 at 129, citing *Manufacturer’s National Bank of Detroit v. Erie City Road Comm.* (1992), 63 Ohio St. 3d 318. Defendant, by not closing the ramp after rainfall coupled with the fact traffic had deteriorated the wedge held an assurance to the motoring public that the roadway was safe and drivable. Evidence has proved otherwise. Defendant did maintain a hazardous roadway condition which did proximately cause plaintiff’s injuries and property damage. Defendant is therefore liable to plaintiff for the damage claimed, plus filing fees.

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

{¶13} 1) Plaintiff’s claim is GRANTED and judgment is rendered in favor of the

plaintiff;

{¶14} 2) Defendant (Department of Transportation) pay plaintiff (Thomas A. Gentile) \$604.96 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/tad
4/15
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