

February 15, 2003 property damage occurrence. Defendant acknowledged its maintenance crews were engaged in snow plowing activities on February 14, 2003 and February 15, 2003, in Highland County. However, defendant has asserted evidence has not been presented to show these snow plowing operations were performed negligently. Defendant argued the snow plowing was performed in a proper manner and ODOT employees exercised reasonable care when operating plowing equipment. Additionally, defendant professed that if plaintiff can prove his damage was proximately caused by the operation of a snow plow, plaintiff's claim should nevertheless be denied. Defendant explained statutory authority has been granted to ODOT to remove snow and ice from roadways. Defendant asserted no evidence has been submitted to indicate these snow plowing operations were negligently performed.

{¶3} After review of all evidence contained in the claim file, the trier of fact finds plaintiff has produced sufficient evidence to show defendant's snow plowing operations created a hazardous roadway condition. Plaintiff has shown defendant's activity resulted in detaching the road reflector from the highway surface. Defendant's contentions concerning the lack of proof regarding the cause of plaintiff's damage are not persuasive.

{¶4} Furthermore, an examination of the photographic evidence establishes that the raised reflector was severely corroded and in poor condition at the time of the accident, causing it to become easily dislodged and damage plaintiff's vehicle. Therefore, defendant did have constructive notice of the defect because the condition of the marker created a probable risk of harm to motorists traveling that portion of highway. See *Dennis v. Department of Transportation* (1998), 98-01078-AD.

{¶5} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723. Further, defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses snow removal operations conduct by

defendant. *Andrews v. Ohio Department of Transportation* (1998), 97-07277-AD.

{¶6} Defendant's personnel must operate equipment in a safe manner. *State Farm Mutual Ins. Company v. Department of Transportation* (1998), 97-11011-AD. In the instant claim, plaintiff has proven, by a preponderance of the evidence, the property damage claimed was proximately caused by the negligent known operation of defendant's snowplow and by maintaining a hazardous condition on the roadway. Defendant is liable to plaintiff for damages in the amount of \$169.59, plus the \$25.00 filing fee.

{¶7} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$194.59, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jay Pfankuch
2091 State Route 321
Sardinia, Ohio 45171

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

RDK/tad
5/28
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