

[Cite as *Williams v. Ohio Dept. of Transp.*, 2003-Ohio-3596.]

IN THE COURT OF CLAIMS OF OHIO

WALTER WILLIAMS	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02187-AD
OHIO DEPARTMENT OF	:	<u>MEMORANDUM DECISION</u>
TRANSPORTATION, DISTRICT 12	:	
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On December 5, 2002, plaintiff, Walter Williams, was traveling on Interstate 480 East near the Broadway Exit in Cuyahoga County, when his automobile struck metal debris in the traveled portion of the roadway. The metal debris, presumably from a recent car wreck caused substantial damage to plaintiff's vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$817.75 for automotive repair. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the debris condition existed. Defendant asserted it dispatched maintenance crews to the area within minutes of receiving actual notice of the debris condition. The vehicle accident which allegedly caused the debris condition occurred at 2:25 P.M. on December 5, 2002. Plaintiff's car struck metal debris on Interstate 480 east at 3:07 P.M. on December 5, 2002.

{¶4} 4) On May 12, 2003, plaintiff filed a response to defendant's investigation report. However, plaintiff has not presented any evidence to indicate the defendant failed

to respond to the debris condition within a reasonable time after receiving notice of the condition.

#### CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due diligence in the 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 debris 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 sufficient actual notice of the roadway debris.

{¶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 debris 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 debris 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 debris.

{¶12} 8) Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

{¶13} 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 defendant. Court costs shall be absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Walter Williams Plaintiff, Pro se  
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For Defendant

RDK/DRB/tad  
5/23  
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