

[Cite as *Hance v. Ohio Dept. of Transp.*, 2003-Ohio-3730.]

IN THE COURT OF CLAIMS OF OHIO

LINDA A. HANCE :

Plaintiff :

V. :

CASE NO. 2003-02691-AD

DEPARTMENT OF TRANSPORTATION :

MEMORANDUM  
DECISION

Defendant :

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## FINDINGS OF FACT

{¶1} 1) On November 20, 2002, Brian Hance, was driving a 1994 Ford Probe on U.S. Route 250 near milepost 7 in Erie County, when the vehicle struck a dislodged monument box cover in the traveled portion of the roadway. As a result of striking the monument box cover, the 1994 Ford Probe received tire and rim damage. This automobile is owned by plaintiff, Linda A. Hance, the mother of Brian Hance.

{¶2} 2) Plaintiff has asserted defendant, Department of Transportation, should bear liability for the damage to her automobile. Consequently, plaintiff filed this complaint seeking to recover \$556.97 for replacement parts, \$100.00 for towing expenses, \$159.00 for loss of use expenses, \$39.00 for the cost of filing a claim against defendant's contractor in the Erie County Court, \$25.00 for filing fee reimbursement for filing a claim in this court, \$4.00 for copying fees in obtaining a copy of a police report concerning the November 20, 2002 incident, and \$334.75 for work loss, mental anguish, and stress. Total damages claimed amount to \$1,218.72.

{¶3} 3) Defendant denied any liability in this matter. Defendant explained the

roadway area where plaintiff's property damage occurred was under construction on November 20, 2002. The prime contractor for the roadway construction on U.S. Route 250 was S.E. Johnson Companies, Inc. Part of the roadway construction on U.S. Route 250 included the installation of monument boxes, which are used for surveying. Defendant denied having any knowledge of a displaced monument box cover at milepost 7 on U.S. Route 250 prior to the November 20, 2002 incident. Defendant denied the monument box cover was improperly attached. Defendant does not have any knowledge regarding how the monument box cover became displaced and therefore a hazard to motorists. Evidence has shown employees of Engineering Associates were performing surveying work on U.S. Route 250 on November 20, 2002. These employees of Engineering Associates, a subcontractor of S.E. Johnson Companies, Inc. may have dislodged the monument box cover that caused plaintiff's property damage.

#### CONCLUSIONS OF LAW

{¶4} 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.

{¶5} 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 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.

{¶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. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However,

"[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.

{¶7} Ordinarily, in a claim involving roadway debris, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective condition (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} Plaintiff has not produced any evidence to indicate the length of time the damage causing material was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the debris on the roadway. Additionally, 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. There is no indication defendant had constructive notice of the damage-causing condition. Finally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

{¶9} Plaintiff's case fails because plaintiff has failed to show, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant, defendant was negligent in maintaining the construction area, or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied,

{¶10} 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 are assessed against plaintiff. 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:

Linda A. Hance  
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For Defendant

RDK/laa  
6/11  
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