

{¶3} 3) Defendant denied any liability in this matter. Defendant acknowledged snow removal and road salting operations were conducted by its crews on an as needed basis during the winter season of 2002-2003. Defendant denied oversalting the roadway portion of State Route 257 in the area of plaintiff's residence. Defendant asserted reasonable care and caution were used by its snow removal crews while conducting operations on State Route 257. Defendant contended plaintiff has failed to produce evidence showing his trees were killed as a proximate cause of any activity under the control of the Department of Transportation. Defendant submitted records which show snow removal and road salting were conducted on State Route 257 in the vicinity of plaintiff's residence on more than fifty days during the 2002-2003 winter season. Defendant has also maintained that plaintiff's claim involving tree damage from snow removal activity on a state roadway is not actionable.

CONCLUSIONS OF LAW

{¶4} 1) Defendant has a duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Department of Transportation* (1976), 49 Ohio App. 2d 335; *White v. Ohio Dept. of Transportation* (1990), 56 Ohio St. 3d 39, 42. When defendant undertakes operations to clear highways of snow and ice, it has a duty to exercise reasonable care to adjacent property owners. *Chain v. Department of Transportation* (1998), 98-03933-AD.

{¶5} 2) In the instant action, plaintiff has appeared to have grounded in allegations in nuisance. To constitute a nuisance, the thing or act complained of must either cause injury to the property of another, obstruct the reasonable use or enjoyment of such property, or cause physical discomfort to such person. *Dorrow v. Kendrick* (1987), 30 Ohio Misc. 2d 40.

{¶6} 3) “[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), 34 Ohio St. 2d 176, 180.

{¶7} 4) 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.

{¶8} 5) To establish a negligence claim, plaintiff has the burden of proof to show by a preponderance of the evidence that defendant had a duty of care owing to plaintiff, a breach of that duty, and an injury proximately resulting from that breach. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75.

{¶9} 6) The mere determination that defendant laid salt on the roadway abutting plaintiff's property will not automatically result in a finding defendant's act led to the destruction of plaintiff's trees. This court was not provided with any legal basis to conclude the spreading of salt upon the roadway was wrongful per se or applied in a negligent manner with disregard for any damage it could cause. The only evidence plaintiff presented to suggest his trees were damaged by salt pollution was plaintiff's own assertion of his belief that is what occurred. No expert evidence was offered regarding the cause of plaintiff's tree damage. Consequently, the court concludes plaintiff has failed to prove by a preponderance of the evidence his property damage was caused by any act of defendant.

{¶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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Delbert Stover
2322 N. St. Rt. 257
Ostrander, Ohio 43061

Plaintiff, Pro se

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

For Defendant

RDK/laa
7/30
Filed 8/13/03
Sent to S.C. reporter 8/25/03