

[Cite as *Martin v. Ohio Dept. of Transp.*, 2003-Ohio-5558.]

IN THE COURT OF CLAIMS OF OHIO

HEATHER A. MARTIN :  
Plaintiff :  
v. : CASE NO. 2003-06409-AD  
DEPARTMENT OF TRANSPORTATION : MEMORANDUM  
Defendant : DECISION

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FINDINGS OF FACT

{¶1} During March and April 2003, employees of defendant, Department of Transportation (DOT), were involved in culvert replacement activities at eleven separate locations on a 10.5 mile area of State Route 188 in Fairfield County. Defendant related the culvert replacement operations began on March 25, 2003 and were completed at sometime during April 2003. Particular operations entailed making roadway excavations, removing exiting culverts, installing new culverts, filling the excavated areas, and compacting the filled areas to level positions with existing untouched roadway surfaces. The filled compacted excavations were open to traffic the same day the work was performed. Defendant asserted “BUMP” warning signs were installed near the culvert replacement sites and orange traffic control cones were emplaced to mark the location of this construction work. Additionally, defendant asserted daily inspections were performed of all filled excavations to monitor losses of compacted filler material. Finally, to complete the project DOT personnel capped the culvert installation sites with rolled asphalt.

{¶2} Plaintiff, Heather A. Martin, stated she was traveling on State Route 188

toward Pleasantville on April 1, 2003, between 7:00 and 9:00 p.m. when she drove her automobile over a culvert installation site. Plaintiff explained the surface of the installation site area deviated from the paved roadway surface by about two inches. Plaintiff claimed this two inch roadway depression caused a crack in the right front wheel of her automobile when she drove across the site. Plaintiff recalled she was traveling approximately 30 m.p.h. when her car struck the depression. Plaintiff acknowledged orange traffic cones were positioned at the installation site, but asserted, "it was dark and I did not see the cones."

{¶3} Plaintiff contended defendant is responsible for the damage to her automobile. Consequently, plaintiff filed this complaint seeking to recover \$508.40, the replacement cost of four new tire rims. According to plaintiff, she was required to purchase four rims because she could not acquire a replacement for the one rim which was broken. Plaintiff implied her property damage was the proximate cause of negligence on the part of DOT in performing construction activities and failing to adequately warn her of a known dangerous condition. On July 2, 2003, plaintiff submitted the filing fee.

{¶4} Defendant denied any liability in this matter. Defendant contended proper procedures were followed in working on the culvert installation. Furthermore, defendant professed adequate warning devices were in place to place motorists on notice of the construction activity. Defendant argued plaintiff has failed to produce evidence to prove her property damage was caused by any conduct attributable to DOT personnel.

#### CONCLUSIONS OF LAW

{¶5} Defendant has the duty to maintain its highway 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 the safety 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 the 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. When conducting construction projects, defendant's personnel must operate equipment in a safe manner. *State Farm Mutual Automobile Ins. v. Department of Transportation* (1998), 97-11011-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} Plaintiff has failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiff's property damage. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's construction activity created a nuisance. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to her car. *Hall v. Ohio Department of Transportation* (2000), 99-12863-AD.

{¶8} 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:

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For Defendant

RDK/laa  
9/19  
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