

[Cite as *Thomas v. Ohio Dept. of Transp.*, 2003-Ohio-5910.]

IN THE COURT OF CLAIMS OF OHIO

DONALD J. THOMAS	:	
Plaintiff	:	
v.	:	CASE NO. 2003-07421-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} 1) On June 25, 2003, plaintiff, Donald J. Thomas, was traveling south on Interstate 71 just past exit 186 in a construction zone in Richland County when a preceding motorist struck a piece of metal debris lying on the roadway propelling the debris into the path of plaintiff's vehicle. The flying metal debris struck the front of plaintiff's car causing substantial body damage.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,076.50, the cost of automotive repair and associated costs including filing fees. Plaintiff implied he incurred these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant has denied liability for plaintiff's damage. Defendant denied having any knowledge of the debris condition prior to plaintiff's incident. Plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to his property damage occurrence.

CONCLUSIONS OF LAW

{¶4} 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.

{¶5} In order to recover in any suit involving injury proximately caused by roadway conditions including debris, 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.

{¶6} Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶7} Plaintiff has not produced any evidence to indicate the length of time the debris 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. 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 debris.

{¶8} Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highway negligently or that defendant's acts caused the debris. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Plaintiff has failed to prove defendant had knowledge of the debris. Plaintiff has failed to prove the debris condition evolved from negligent maintenance. Plaintiff has failed to show the damage-causing object was connected to any negligence on the part of defendant, defendant was negligent in maintaining the construction area, or any negligence on the part of defendant. *Brzuszkiewicz v. Dept. of Transportation* (1998), 97-12106-AD; *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.

{¶19} 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:

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Plaintiff, Pro se

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For Defendant

RDK/laa
9/19
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