

[Cite as *Barone v. Ohio Dept. of Transp.*, 2003-Ohio-6269.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL D. BARONE	:	
Plaintiff	:	
v.	:	CASE NO. 2003-08525-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} On July 23, 2003, at approximately 7:17 a.m., plaintiff, Michael D. Barone, was traveling east on Interstate 480 near the Ridge Road exit in Cuyahoga County, when an object struck the windshield of his 2001 Chevrolet Silverado causing property damage. Plaintiff related the object which damaged his truck windshield emanated from a roadway construction site adjacent to the traveled portion of the roadway.

{¶2} Plaintiff filed this complaint seeking to recover \$200.00, the cost of a replacement windshield. Plaintiff contended his property damage was proximately caused by negligence on the part of agents of defendant, Department of Transportation, in conducting construction activities. On August 15, 2003, plaintiff submitted the filing fee.

{¶3} Defendant acknowledged the area of Interstate 480 where plaintiff incident occurred was under construction on July 23, 2003. Defendant explained its contractor, Kenmore Construction, was involved in excavating, pavement removal, and aggregate base work in the westbound direction of Interstate 480. Defendant contended construction activity on the westbound roadway had no likely effect on motorists such as plaintiff traveling east on Interstate 480. Defendant stated all work was separated from the

traveling public by a 50-inch concrete barrier.

{¶4} Defendant argued plaintiff has not produced sufficient evidence to prove his property damage was caused by any construction operation. Defendant maintained all construction equipment contained proper safety devices to prevent damages presented by flying debris. Defendant asserted due care was taken by construction crews to operate equipment in a manner to protect passing motorists from danger.

{¶5} On October 6, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his truck windshield was damaged by flying debris emanating from a roadway construction site. Plaintiff professed the 50-inch barriers installed along the roadway were not high enough to block flying debris. Plaintiff reasserted defendant should bear liability for all damages claimed.

CONCLUSIONS OF LAW

{¶6} 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 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. Company v. Department of Transportation* (1998), 97-11011-AD.

{¶7} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that he 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.

{¶8} 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, 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.

{¶9} 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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10/17

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