

[Cite as *Johnston v. Ohio Dept. of Transp.*, 2003-Ohio-6429.]

IN THE COURT OF CLAIMS OF OHIO

EDWARD M. JOHNSTON	:	
Plaintiff	:	
v.	:	CASE NO. 2003-07189-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶1} 1) On June 12, 2003, plaintiff, Edward M. Johnston, was traveling north on State Route 7 in Jefferson County when he exited the roadway and drove onto the Fort Steuben Bridge spanning the Ohio River. As plaintiff drove onto the bridge, his truck tire struck a piece of metal debris which was protruding from a drain hole on the bridge. The metal debris punctured plaintiff's tire truck.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$109.17, the cost of a replacement tire which he contends was incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the bridge roadway. Plaintiff also seeks reimbursement of the \$25.00 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.

{¶4} 4) Plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the bridge roadway prior to his property damage occurrence.

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. Somerford Twp.* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶6} 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. Ohio Dept. of Transp.* (1976), 75-0287-AD.

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

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

{¶9} 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 Dept. of Transp.* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway debris.

{¶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:

Edward M. Johnston
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Plaintiff, Pro se

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For Defendant

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RDK/laa
10/16
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