

[Cite as *Crone v. Ohio Dept. of Transp.*, 2003-Ohio-7133.]

IN THE COURT OF CLAIMS OF OHIO

JASON A. CRONE	:	
Plaintiff	:	
v.	:	CASE NO. 2003-09386-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

{¶1} On August 5, 2003, employees of defendant, Department of Transportation (DOT), performed maintenance work on a five-mile section of U.S. Route 224 in Van Wert County. This maintenance activity involved spraying emulsified asphalt over a twelve-foot wide roadway lane surface followed by covering the sprayed roadway with stone aggregate. The covered highway surface area was then compacted with two rubber tire rollers. This roadway application, identified as a “chip seal process,” was required to “set up” overnight. Once the application had set DOT crews returned to the area with two power brooms and swept excess stone from the roadway three separate times. After sweeping operations were conducted, new center and edge line paint were applied to the highway surface thereby completing the maintenance procedure.

{¶2} Plaintiff, Jason A. Crone, stated he was traveling in the eastbound lane of U.S. Route 224 on August 5, 2003 at approximately 4:30 p.m., when he approached the roadway maintenance area on the westbound lane of U.S. Route 224. Plaintiff related he knew the DOT workers had been “putting down tar and stone in the westbound lane of Rt. 224.” According to plaintiff, vehicles traveling in the westbound lane of U.S. Route 224 were passing over the loose stone aggregate on the roadway lane and propelling the

aggregate into the path of vehicles traveling in the eastbound roadway lane. Plaintiff claimed his truck was pelted with aggregate as he passed through the roadway maintenance area. After having his truck damaged by the flying debris, plaintiff asserted he contacted defendant's district office in Lima. Plaintiff professed he was told by a DOT employee that the maintenance crews working on U.S. Route 224 "were having trouble with the stone sticking to the stuff they spread on the road." Plaintiff contended his truck sustained body damage by being pelted with stone aggregate material placed on the roadway by DOT employees. Consequently, plaintiff filed this complaint seeking to recover \$2,103.36, the total cost of truck body repair resulting from the August 5, 2003 incident. Plaintiff implied his property damage was proximately caused by negligence on the part of defendant in conducting highway maintenance operations. Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant denied any liability in this matter. Defendant explained it did not receive any complaints, other than from plaintiff, concerning the August 5, 2003 maintenance activity. Defendant argued every precaution was taken to protect motorists from any danger arising from the road work. Defendant did not dispute plaintiff's assertions regarding passing motorists propelling stone aggregate into the path of his truck. Defendant suggested these passing motorists, by not decelerating their vehicles through a construction zone, were the primary cause of plaintiff's damage. Defendant denied the roadway maintenance was performed in a negligent manner.

{¶4} In order for plaintiff to prevail upon his 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. The Ohio Department of Transportation (ODOT) has the duty to maintain the system of highways free from unreasonable risk of harm by exercising ordinary reasonable care. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42. However, ODOT is not an insurer of the safety of its highways. *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶5} 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. Generally, defendant has a duty to post warning signs notifying motorists of highway defects or dangerous conditions. *Gael v. State* (1979), 77-0805-AD.

{¶6} Further, defendant must exercise due diligence in the maintenance and repair of 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.

{¶7} In the instant claim, plaintiff has presented credible evidence to the trier of fact that his damage was caused by defendant's negligence in conducting the roadside maintenance operation. Evidence has shown plaintiff's damage was proximately caused by the application of non-adhering loose aggregate to the sprayed roadway surface. Furthermore, it is uncertain whether warning signs were in place at 4:30 p.m. on August 5, 2003 to caution motorists about the roadway conditions caused by the maintenance activity. Plaintiff has provided sufficient proof to show his truck was damaged as a result of negligent acts or omissions on the part of defendant's agents. Consequently, defendant is liable to plaintiff in the amount of \$2,103.36, plus the \$25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶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 plaintiff in the amount of \$2,128.36, which includes the filing fee. Court costs are assessed against defendant. 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:

Jason A. Crone  
415 George Street  
Van Wert, Ohio 45891

Plaintiff, Pro se

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

For Defendant

DRB/RDK/laa  
11/24  
Filed 12/9/03  
Sent to S.C. reporter 12/29/03