

[Cite as *Keene v. Ohio Dept. of Transp.*, Dist. 12, 2004-Ohio-1354.]

IN THE COURT OF CLAIMS OF OHIO

APRIL JOY KEENE

•

Plaintiff

□

□

V.

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CASE NO. 2003-11488-AD

OHIO DEPT. OF TRANSPORTATION, :  
DIST. 12

□

□

Defendant

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## FINDINGS OF FACT

{¶1} 1) On November 12, 2003, plaintiff, April Joy Keene, was traveling on Interstate 90 near milepost 26.72 in Cuyahoga County when her car struck an orange traffic control cone in the traveled portion of the roadway. Plaintiff asserted her vehicle's body was damaged as a result of striking the orange cone.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$125.37, the cost of automotive repair and towing expenses. Plaintiff contended her property damage was proximately caused by negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant denied liability based on the fact it did not have any knowledge of the orange cone laying on the roadway surface.

## CONCLUSIONS OF LAW

{¶4} 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 highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶5} Ordinarily, in a claim involving roadway debris in order to recover, 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. Plaintiff has failed to prove defendant had knowledge of the debris. Plaintiff has failed to prove the debris condition evolved from negligent maintenance. Plaintiff failed to show the damage-causing object was connected to any negligence on the part of defendant, defendant was negligent in maintaining the 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.

{¶6} 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:

April Joy Keene  
6325 Gatewood Drive  
Mentor, Ohio 44060

Plaintiff, Pro se

Gordon Proctor, Director  
Department of Transportation  
1980 West Broad Street

For Defendant

Columbus, Ohio 43223

DRB/RDK/laa

2/24

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