

[Cite as *Payne v. Ohio Dept. of Transp.*, 2004-Ohio-1828.]

IN THE COURT OF CLAIMS OF OHIO

DELLA PAYNE	:	
Plaintiff	:	
v.	:	CASE NO. 2003-10759-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} Plaintiff, Della Payne, stated she traveled on Cleveland Avenue in Columbus, Ohio during the week of August 4, 2003 and suffered damage to the body of her car when gray liquid matter fell upon her vehicle from a bridge spanning the roadway. Plaintiff located the bridge at the underpass of the intersection of Cleveland Avenue and Jack Gibbs Boulevard. Plaintiff explained the substance which fell upon her vehicle could not be washed away or scraped off her car. Consequently, plaintiff was required to have her automobile repainted. Plaintiff has implied defendant, Department of Transportation ("DOT"), is responsible for her property damage and she has therefore filed this complaint seeking to recover \$1,139.24, the cost of automotive repair, plus \$25.00 for filing fee reimbursement.

{¶2} DOT denied any liability in this matter. Defendant explained the bridge area where plaintiff claimed her property damage occurred was in a roadway construction zone under the

control of DOT's contractor, Complete General Construction Company (Complete General). Defendant asserted Complete General, by contractual agreement, assumed responsibility for maintaining the bridges and roadway within the construction zone. Therefore, DOT argued Complete General is the proper party defendant in this action. Defendant implied all duties, such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair, were delegated when an independent contractor takes control over a particular section of roadway including bridges.

{¶3} Furthermore, defendant acknowledged Complete General personnel were working on the deck of the westbound Cleveland Avenue bridge during the week of August 4, 2003. However, Complete General denied performing any work that would result in any kind of over spray falling on cars. Complete General denied using any paint, concrete, concrete slurry, or other substance during the week of August 4, 2003, which could have attached to passing traffic. Plaintiff did not submit sufficient proof to establish her car was damaged as the proximate result of construction activity on the party of DOT's contractor.

#### CONCLUSIONS OF LAW

{¶4} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Dept. of Transp.* (2004), 2003-09343-AD.

{¶5} 2) Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Dept. of Transp.* (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.

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a. Plaintiff has not shown, 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 that the damage-causing liquid matter was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the construction area, or that there was any negligence on the part of defendant or its agents. *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.

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Plaintiff :  
v. : CASE NO. 2003-10759-AD  
OHIO DEPT. OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE  
Defendant : DETERMINATION

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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:

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5207 Honeytree Loop E  
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Plaintiff, Pro se

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For Defendant

RDK/laa  
3/16  
Filed 3/25/04

Sent to S.C. reporter 4/9/04