

[Cite as *Hale v. Ohio Dept. of Transp.*, 2004-Ohio-2101.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES E. HALE

:

Plaintiff

:

v.

:

CASE NO. 2003-10431-AD

OHIO DEPT. OF TRANSPORTATION,
DISTRICT 9

:

MEMORANDUM DECISION

:

Defendant

.....

{¶1} On August 26, 2003, at approximately 8:00 p.m., personnel of defendant, Department of Transportation ("DOT"), began work on replacing a culvert spanning U.S. Route 50 in Ross County. This culvert replacement project was initiated with defendant's crews digging out the existing culvert, installing a replacement, and filling the remaining excavation with stone aggregate. According to defendant, the project was completed at 4:00 p.m. on August 27, 2003, after eight inches of hot mix asphalt replacing the temporary stone aggregate filling was poured into the excavation and laid flush with the grade of the existing pavement. Roadway traffic was controlled by DOT crews during the phase of the operation involving the setting of the hot asphalt mix. During the replacement operations, DOT personnel positioned "Bump" signs about 250 feet away from each side of the culvert installation site as a warning to motorists traveling on U.S. Route 50. Defendant related these "Bump" signs remained in place from August 27, 2003 until October 29, 2003.

{¶2} Plaintiff, Charles E. Hale, stated he was driving on U.S. Route 50 on August 29, 2003 at approximately 6:15 a.m. when he approached the culvert installation site. Plaintiff related weather conditions were foggy and overcast and he did not notice any signs or traffic control devices warning motorists about the roadway status caused by DOT's recent construction. Plaintiff explained that not only was the culvert replacement site unmarked, but the filler material installed by defendant had worn down creating a roadway depression. Plaintiff asserted he drove over this area at roughly 40 m.p.h. and immediately discerned a great deal of damage had been done to his automobile.

{¶3} Consequently, plaintiff filed this complaint seeking to recover \$1,030.21, the complete cost of automotive repair associated with the August 29, 2003 incident. Plaintiff submitted the filing fee with the complaint. Plaintiff contended his property damage was proximately caused by defendant's negligence in maintaining a hazardous roadway condition. Plaintiff asserted the damage to his vehicle involved the replacement of four tires, four wheels, a front wheel bearing, a rear control arm, and a left outer tire rod. Plaintiff had repair work done on September 15, 2003, September 22, 2003, and September 29, 2003. On September 22 or September 23, 2003, plaintiff filed an accident report with the Ross County Sheriff's Office regarding the August 29, 2003 incident. The report listed the date of plaintiff's incident as September 23, 2003.

{¶4} Plaintiff submitted a typed statement signed by twelve individuals who apparently witnessed the culvert replacement site on U.S. Route 50. This statement contained the following language: "[t]he undersigned verify that the hole left attended and in the fog on the morning of August 29, 2003 on State Route 50 was not only destructive to vehicles, but was very dangerous." The trier

of fact shall give this submission the full weight it merits.

{¶5} Defendant has denied any liability in this matter. Defendant related the culvert on U.S. Route 50 was installed, "in an acceptable manner in compliance with ordinary culvert replacement standards." Defendant asserted no calls or complaints were received concerning any dangerous roadway conditions caused by the culvert replacement activity. Defendant argued plaintiff has failed to produce sufficient evidence to establish his property damage was caused by a roadway condition attributable to DOT maintenance activity. Defendant stated "bump" signs were in place to warn motorists of the construction. Defendant implied all precautions were taken to satisfy its duty of care to motorists in regard to the roadway construction project. Defendant has argued plaintiff did not prove any DOT conduct or inattention proximately caused the property damage claimed.

{¶6} 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. Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessey v. Ohio Hwy. Dept.* (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 Transp.* (1992), 91-07526-AD. When conducting construction projects, defendant's personnel must operate equipment in a safe manner. *State Farm Mut. Ins. v. Ohio Dept. of Transp.* (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. 3d 282, 185. 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 Univ.* (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 has failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiff's property damage. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's construction activity created a nuisance. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to his car. *Hall v. Ohio Dept. of Transp.* (2000), 99-12863-AD.

{¶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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Plaintiff, Pro se

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For Defendant

DRB/RDK/laa
3/23
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