

[Cite as *Ross v. Ohio Dept. of Transp.*, 2004-Ohio-2377.]

IN THE COURT OF CLAIMS OF OHIO

DRAKE D. ROSS	:	
Plaintiff	:	
v.	:	CASE NO. 2003-11372-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

{¶1} 1) On October 4, 2003, plaintiff, Drake D. Ross, was traveling east on Interstate 480 in Warrensville Heights, Ohio, "when a steel object that was apparently part of a road-sign" struck the hood and windshield of plaintiff's vehicle. Plaintiff related he observed, "a lot of debris and construction material just inches to the left of the left lane along this stretch of road."

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,055.45, his claimed out-of-pocket expense for automotive repair resulting from the October 4, 2003 incident. Plaintiff contended his property damage was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining the roadway. Plaintiff paid a filing fee.

{¶3} 3) Defendant denied any liability for plaintiff's damage. Defendant denied having any knowledge of debris on the roadway prior to plaintiff's incident. Defendant explained its contractor was performing construction work in general area where plaintiff's property damage occurred. Defendant's contractor denied having any knowledge of the debris which struck plaintiff's vehicle.

{¶4} 4) On March 12, 2004, plaintiff filed a response to defendant's investigation report. While plaintiff asserts defendant should be responsible for the damage to his vehicle, plaintiff failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to his property damage occurrence. Plaintiff failed to show the damage-causing debris emanated from construction activity or other activity under the control of DOT. Plaintiff asserted DOT has a duty, "to insure that the roadways are constructed and maintained in a safe manner for travel."

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. 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. 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. Hwy. Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the debris.

{¶9} Additionally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's act 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} Plaintiff has 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 Transp.* (1998), 97-12106-AD; *Taylor v. Transp. Dept.* (1998), 97-10898; *Weininger v. Dept. of Transp.* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transp.* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

{¶11} 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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4/12
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