

[Cite as *Smith v. Ohio Dept. of Transp., Dist. 12, 2004-Ohio-2884.*]

IN THE COURT OF CLAIMS OF OHIO

SCOTT A. SMITH	:	
Plaintiff	:	
v.	:	CASE NO. 2004-01486-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
.....	:	

FINDINGS OF FACT

{¶1} 1) On November 19, 2003, at approximately 11:45 a.m., plaintiff, Scott A. Smith, was traveling east on Interstate Route 480 between Ridge Road and State Road in Cuyahoga County, when his automobile struck dirt, concrete, and stone debris lying in the roadway, causing property damage to the vehicle.

{¶2} 2) Plaintiff has filed this complaint seeking to recover \$927.87, his cost for automobile repair, which he contends he incurred as a result of negligence on the part of defendant, Department of Transportation, in failing to maintain the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant has denied liability based on the fact that it had no knowledge that the debris was present in the roadway prior to the incident. Furthermore, defendant asserts that plaintiff has failed to show, by a preponderance of the evidence, that defendant, in a general sense, maintains its highways negligently.

{¶4} 4) Plaintiff has submitted no evidence to indicate the length of time that the debris existed in the roadway prior to his November 19, 2003, property damage event.

#### CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, 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; *O'Hearn v. Ohio Department of Transportation* (1985), 84-03278-AD.

{¶7} 3) There is no evidence that defendant had actual notice of the existence of the debris.

{¶8} 4) The trier of fact is precluded from making an inference of defendant's constructive notice, unless plaintiff presents evidence in respect to the time the debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶9} 5) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the debris appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶10} 6) No evidence has shown defendant had constructive notice of the debris.

{¶11} 7) Furthermore, plaintiff has failed to show defendant

negligently maintained its highways.

{¶12} 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:

Scott A. Smith  
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Plaintiff, Pro se

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For Defendant

DRB/RDK/laa  
4/28  
Filed 5/7/04  
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