**[Cite as *Arrowood v. Ohio Dept. of Transp, Dist. 9*, 2004-Ohio-3765.]**

IN THE COURT OF CLAIMS OF OHIO

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| BT ARROWOOD | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2004-04183-AD |
| OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 9 | : | MEMORANDUM DECISION |
| Defendant | : | |

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**{¶1}** On March 29, 2004, at approximately 10:00 a.m., plaintiff, Tom Arrowood, was traveling south on US Route 23 between the Eastern Avenue exit and the Three Locks Road exit in Ross, Ohio, when his 1995 Chevrolet G20 van was struck by a road construction sign that was blown into the roadway. Plaintiff related the sign was positioned on the roadway berm but had been windblown over the traveled portion of the roadway striking the front and left side of plaintiff's van as he drove past. Plaintiff described the damage-causing sign as a "big aluminum sign orange rectangle with aluminum legs." The damage-causing sign was owned by defendant, Department of Transportation (DOT) and had been placed along the roadside by DOT personnel to notify motorists of pavement maintenance being conducted in the southbound lanes of US Route 23. Plaintiff stated he observed DOT crew in the vicinity picking up traffic control signs at the time of his property damage incident.

**{¶2}** Plaintiff asserted the left headlight area on his van as

well as several areas on the left side of his vehicle were damaged as a result of contact with defendant's sign. Plaintiff contended his property damage was proximately caused by negligence on the part of DOT in positioning and installing the sign along the median of US Route 23 in Ross County. Consequently, plaintiff filed this complaint seeking to recover $991.94 for automotive body repair necessitated by the March 29, 2004 incident. Plaintiff also seeks recovery of an additional $208.06 for, "all the trouble that he went through to get two damage estimates, the accident report, all gas used and time lost." Plaintiff additional claims above the claim for automotive repair are not recognizable elements of damages in a claim of this type. Plaintiff's damage claim is set at $991.94. The additional monetary claims will not be further addressed. Plaintiff acknowledged he maintains insurance coverage with a $500.00 deductible provision for damage to his vehicle. Plaintiff declared he has not received any insurance proceeds to defray the cost of repairing his van. Plaintiff was excused from paying the requisite material filing fee by submitting a document showing he receives a monthly permanent and total disability pension benefit from the Veterans Administration in the amount of $807.00. Plaintiff failed to submit any documentation with regard to any income he may receive from sources such as employment, retirement, workers' compensation, unemployment benefits, etc.

**{¶3}** Defendant acknowledged a DOT maintenance crew was working on the southbound lanes of US Route 23 in Ross County on March 29, 2004. Defendant further acknowledged work zone signs were positioned on the grass median separating the north and south lanes of US Route 23. Defendant explained a paved inside roadway shoulder of approximately four feet in width separated the grass median area from the paved inside lane of the roadway. According to defendant, the work zone signs were installed on the grass

median approximately two feet from the outside edge of the paved shoulder. When added to the four feet of paved roadway shoulder, the signs were seemingly positioned about six feet from the outside edge line of the left southbound traveling lane of US Route 23. Defendant implied that based on the positioning of the signs, at six feet in distance from the nearest traveling lane, any sign in use could not have toppled over and struck plaintiff's van. Defendant contended the signs in use on March 29, 2004, were not of sufficient size to topple over from a particular set position and reach vehicular traffic moving in the left southbound lane of US Route 23.

**{¶4}** Therefore, defendant denied any liability in this matter. Defendant argued plaintiff has failed to produce sufficient evidence to establish his property damage was proximately caused by negligence on the part of DOT crews involved with sign installation. Defendant submitted a photograph depicting a "typical setup for a work zone sign," used by DOT personnel. Defendant submitted a sketch by Gene Johnson, identified as Transportation Manager 1 for Ross County. This sketch with accompanying written commentary was intended to portray the particular traffic control set up for the maintenance operation on US Route 23 on March 29, 2004. Johnson's commentary indicated signs were placed in the median. Defendant insisted plaintiff's damage was not the result of any negligence on the part of DOT personnel.

**{¶5}** On June 7, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff asserted the sign which damaged his van was over six feet in height and had leg supports of over four feet. Plaintiff contended the sign in use on March 29, 2004, was of sufficient height to topple over and protrude at least two feet into the traveled portion of the roadway. Plaintiff insisted

his van was damaged as a proximate cause of negligence on the part of defendant's employees in installing and positioning the road maintenance signs.

**{¶6}** Initially, the court determines any issues regarding comparative negligence on the part of plaintiff will not be further addressed. Comparative negligence is classified as an affirmative defense and has not been raised by defendant. Since defendant did not raise the issue, the defense is considered waived.

**{¶7}** 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. This duty encompasses the repair and maintenance of road signs. 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. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

**{¶8}** 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. 2d 282, 295. 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 University* (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 fails to sustain such burden." Paragraph three of the syllabus in *Steven v.*

*Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed.

**{¶9}** Additionally, defendant has a duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, the court concludes sufficient evidence has been presented to show defendant breached a duty of care owed to plaintiff and this breach proximately caused plaintiff's damage. Properly maintained signs usually do not fly from secure anchorage into the traveled roadway without negligence involved. Therefore, defendant is liable to plaintiff in the amount of $991.94.

**{¶10}** 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 plaintiff in the amount of $991.94. Court costs are assessed against defendant. 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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DRB/RDK/laa
6/9
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