[Cite as *Franks v. Ohio dept. of Transp., Dist. 7*, 2004-Ohio-4379.]

IN THE COURT OF CLAIMS OF OHIO

AMANDA FRANKS, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2004-04205-AD
OHIO DEPT. OF TRANSPORTATION, DISTRICT 7	:	MEMORANDUM DECISION
Defendant	:	

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{¶1} On March 11, 2004, at approximately 4:45 p.m., plaintiff, Amanda Franks, was driving a Chevrolet Blazer owned by plaintiff, Terry Franks, on Interstate 75 near Miamisburg, Ohio. Amanda Franks traveled on Interstate 75 until exiting the roadway onto the State Route 725 exit ramp. Located at the top of the ramp above the traveled portion of State Route 725 was an overhead traffic signal. After stopping at the traffic light area, Amanda Franks started to turn right onto State Route 725 when the entire traffic signal mechanism broke from its suspension cable and fell upon the Chevrolet Blazer causing substantial property damage. Plaintiff, Amanda Franks, explained, "the wire that holds the traffic light up, broke, causing it to fall." This incident occurred during daylight hours, with clear weather conditions on a dry roadway area.

{¶2} Plaintiffs contended the March 11, 2004, property damage occurrence was attributable to negligence on the part of defendant,

Department of Transportation (DOT), in maintaining a dangerous traffic light. Consequently, plaintiffs filed this complaint seeking to recover $1,588.94, the total cost of vehicle repair incurred resulting from the damage sustained on March 11, 2004. The requisite material filing fee was paid.

{¶3} Defendant denied any liability in this matter. Defendant denied the March 11, 2004, property damage occurrence was proximately caused by any negligent act or omission on the part of DOT personnel. Defendant related the traffic light mechanism which fell upon plaintiff's vehicle was inspected by DOT employee, Brian Sweeney, nearly six months prior to the incident forming the basis of this claim. Sweeney's inspection, conducted on September 17, 2003, did not note any defective conditions with the traffic signal or its support cables. Therefore, defendant argued plaintiffs failed to submit sufficient evidence to prove the traffic signal located at the intersection of the Interstate 75 exit ramp and State Route 725 was in a deteriorated state prior to March 11, 2004.

{¶4} Furthermore, defendant suggested plaintiffs' property damage was caused solely by an "Act of God" and was not related in any way to negligence on the part of DOT. Defendant asserted that its investigation revealed that abnormally high wind conditions were present in the Miamisburg area on March 11, 2004. Defendant stated, "according to a local climatological data sheet from the National Weather Service, on the day in question, winds reached speeds of up to forty-four (44) miles per hour in the Dayton area." Defendant submitted a copy of this described climatological data sheet for March 11, 2004. Measurements from this sheet show maximum wind gust speed in the Dayton area was recorded at 45 mph. Wind speed at 4:54, at around the time the traffic light fell, was recorded at 28.8 mph. Defendant contended the "Act of God"

manifested in the form of high velocity winds was the proximate cause of plaintiffs' property damage and consequently, DOT should be excused from any liability.

{¶5} Liability for negligence is predicated upon injury caused by the failure to discharge a duty owed to the injured party. *Moncol v. Bd. of Education* (1978), 55 Ohio St. 2d 72. Therefore, to prevail in an action founded upon negligence, plaintiffs must demonstrate:

a. that defendant had a duty, recognized by law, requiring conformance of conduct to a certain standard for the protection of plaintiff;
b. that defendant failed to conform its conduct to that standard; and
c. that the defendant's conduct proximately caused the plaintiff to sustain actual loss or damage.

{¶6} 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 traffic signals. 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.

{¶7} In the instant claim, defendant insisted no duty of care owed to the motoring public was breached and plaintiff's property damage was not caused by a defective device under the control of DOT. Defendant contended the damage claimed was solely caused by an "Act of God;" in this particular instance high winds of close to 29 mph with gusting which may or not have reached 45 mph at the time of plaintiff's incident. Evidence has shown March 11, 2004, was a windy

day with above average wind speeds recorded, although weather conditions were clear and temperatures were seasonable.

{¶8} It is well-settled Ohio law that if an "Act of God" is so unusual and overwhelming as to do damage by its own power, without reference to and independently of negligence by defendant, there is no liability. *Piqua v. Morris* (1918), 98 Ohio St. 42, 48. "The term 'Act of God' in its legal significance, means any irresistible disaster, the result of natural causes, such as earthquakes, violent storms, lightning and unprecedented floods." Id. at 47-48. "An act of God must proceed from the violence of nature or the force of the elements alone and the agency of man must have had nothing to do with it." *GTR Land Co. v. Wilson Cabinet Co.*, 1988 Ohio Ap. LEXIS 5393*13 (Dec. 30, 1988), Holmes App. No. CA-386, unreported, quoting 1 Ohio Jurisprudence 2d, Act of God at 2.

{¶9} However, in a situation where two causes contribute to an injury, one cause which is defendant's negligence and the other cause, an "Act of God," liability shall attach to defendant if plaintiff's damage would not have happened but for defendant's negligence. *Nationwide Ins. Co. v. Jordan* (1994), 64 Ohio Misc. 2d 30. If proper care and diligence on the part of defendant would have avoided the act, it is not excusable as an "Act of God." *Bier v. City of New Philadelphia* (1984), 11 Ohio St. 3d 134. This court, as trier of fact, determines questions of proximate causation. *Schinaver v. Szymanski* (1984), 14 Ohio St. 3d 51.

{¶10} In *Piqua*, supra, the court stated, in paragraph one of the syllabus:

{¶11} "The proximate cause of a result is that which in a natural and continued sequence contributes to produce the result, without which it would not have happened. The fact that some other cause concurred with the negligence of a defendant in producing an injury, does not relieve him from liability unless it is shown such other cause would have produced injury independently of defendant's negligence."

{¶12} The circumstances of plaintiffs' injuries raise the doctrine of *res ipsa loquitur* to support allegations that defendant breached its duty of care. The doctrine warrants an inference of negligence, such inference, however, may always be rebutted by

defendant. *Taxi Cabs of Cincinnati, Inc. v. Kohler* (1959), 111 Ohio App. 225, 165 N.E. 2d 244, syllabus.

{¶13} *Res ipsa loquitur* is a rule of evidence, not a rule of substantive law, and the court must analyze such evidence, along with all the other evidence offered in a case to determine liability. *Hake v. Wiedemann Brewing Co.* (1970), 23 Ohio St. 2d 65, 66, 262 N.E. 2d 703, 705.

{¶14} "To warrant application of a rule, a plaintiff must adduce evidence in support of two conclusions: (1) That the instrumentality causing the injury was, at the time of the injury, or at the time of the creation of the condition causing the injury, under the exclusive management and control of the defendant; and (2) that the injury occurred under such circumstances that in the ordinary course of events it would not have occurred if ordinary care had been observed. (Citations omitted).

{¶15} "Whether sufficient evidence has been adduced at trial to warrant application of the rule is a question of law to be determined *** by the trial court ***." Id. at 66-67, 262 N.E. 2d at 705. See, also, 77 Ohio Jurisprudence 3d (1986), 300-301, Negligence, Section 159. Therefore, the court is required to consider the facts and circumstances surrounding the situation to determine if *res ipsa loquitur* is applicable. See *Howard v. Pennsylvania Rd. Co.* (1930), 43 Ohio App. 96, 182 N.E. 663.

{¶16} The facts of this case concisely presented are: 1) plaintiffs' vehicle was damaged by a falling traffic signal under defendant's control; and 2) traffic signals do not normally fall unless negligence is involved. The doctrine of *res ipsa loquitur*, with its inference of negligence, applies under the facts of the instant claim. The inference of negligence remains and plaintiffs are not required to exclude all possible causes of the accident. See *Fink v. New York Central Rd. Co.* (1944), 144 Ohio St. 1, 56

N.E. 2d 456; *Nanashe v. Lemmon* (1958), 82 Ohio Laws Abs. 97, 162 N.E. 2d 569.

{¶17} "The doctrine of *res ipsa loquitur*, is one of necessity, applicable where the agency or place of the accident is accessible only to the defendant and under his control, and raises an inference of negligence requiring the defendant to explain the accident, if he can, on grounds other than his negligence, when its nature is such as to make it probable that it would ordinarily not have happened except for his negligence. The doctrine is regarded as a qualification of the rule that negligence is not presumed or inferred from the mere fact of injury, and there is no necessity of establishing knowledge where the doctrine applies.

{¶18} "The doctrine of *res ipsa loquitur* is founded on an absence of specific proof of acts or omissions constituting negligence, and the particular justice of the doctrine rests upon the foundation that the *true cause of the occurrence, whether innocent or culpable, is within the knowledge or access of the defendant and not within the knowledge or access of the plaintiff*." (Citations omitted.) (Emphasis added.) 70 Ohio Jurisprudence 3d (1986), 296-297, Negligence, Section 157.

{¶19} Upon review of the circumstances concerning plaintiff's injuries, and in viewing the evidence most favorably to plaintiffs, as the court must do in determining whether *res ipsa loquitur* applies (*Howard*, Id.), the court finds that said doctrine is applicable in the instant action.

{¶20} It is the opinion of this court that it may be inferred that plaintiffs' damages were related to defendant's maintenance of the traffic signal. The court finds that said doctrine is applicable in the instant action.

{¶21} It is the opinion of this court that it may be inferred that plaintiffs' damages were related to defendant's maintenance of

the traffic signal. The court finds that the instrumentality involved, under the circumstances, i.e., was under the exclusive control of defendant and the property damage occurred under such conditions if proper precautions were observed, such an event would not have happened. The court, in the instant action, concludes the March 11, 2004, property damage event occurred when a defective suspension cable failed causing the traffic signal to fall and crash onto plaintiffs' vehicle. The wind conditions on March 11, 2004, were insufficient to solely cause the failure of defendant's traffic signals. When installed, traffic signals are designed to withstand anticipated weather conditions in this state. Defendant should have conducted traffic signal maintenance and inspection in a more frequent manner. Plaintiffs have proven the property damage claimed was proximately caused by negligence on the part of DOT.

{¶22} 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 plaintiffs in the amount of $1,613.94, which includes the filing fee. 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

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