

[Cite as *Black v. Dept. of Transp.*, 2004-Ohio-4828.]

IN THE COURT OF CLAIMS OF OHIO

JENNIFER BLACK :
Plaintiff :
v. : CASE NO. 2004-05821-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Jennifer Black, stated she drove on State Route 22 from Lancaster, Ohio to Washington Court House, Ohio during the afternoon hours of April 13, 2004. Plaintiff related that at sometime while traveling she noticed road workers, presumably employees of defendant, Department of Transportation (DOT), conducting roadway painting operations. Plaintiff explained when she arrived at the Washington Court House destination, she looked at her car, and discovered the passenger side of the vehicle had been sprayed with yellow paint.

{¶2} 2) Plaintiff contended her automobile was damaged by negligence on the part of DOT personnel in performing painting activities on State Route 22 on April 13, 2004. Plaintiff filed this complaint seeking to recover \$500.00, the stated cost of repainting her car. Plaintiff did not submit any estimates or other documentation regarding automotive repair costs. Plaintiff did not submit any demonstrative evidence depicting the paint

damage to her vehicle. Plaintiff did submit the requisite filing fee.

{¶3} 3) Defendant denied any liability in this matter. Defendant denied any DOT personnel or DOT agents were conducting roadway painting operations on State Route 22 between Lancaster and Washington Court House at any time on April 13, 2004.

CONCLUSIONS OF LAW

{¶4} 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, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶5} Defendant has the duty to maintain its highways 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.

{¶6} Plaintiff has the burden of proof to show her property damage was the direct result of failure of defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, plaintiff has failed to prove her property damage was caused by any negligent act or omission on the part of defendant.

IN THE COURT OF CLAIMS OF OHIO

JENNIFER BLACK

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Plaintiff :
v. : CASE NO. 2004-05821-AD
DEPARTMENT OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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:

Jennifer Black
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Plaintiff, Pro se

Gordon Proctor, Director
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For Defendant

RDK/laa
8/13
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