

[Cite as *Reidy v. Ohio Dept. of Transp.*, 2004-Ohio-5045.]

IN THE COURT OF CLAIMS OF OHIO

MELINDA ANN REIDY :

Plaintiff :

v. :

CASE NO. 2004-06054-AD

OHIO DEPARTMENT OF :  
TRANSPORTATION :

MEMORANDUM DECISION

Defendant :

.....

{¶ 1} 1) On April 29, 2004, plaintiff, Melinda Ann Reidy, was traveling east onto the entrance ramp to State Route 32 in Hamilton County, when her automobile tire, “caught itself on the jagged, uneven, crumbling concrete coming off the inside of the curb,” of the roadway ramp. This concrete curb material totally destroyed the back right tire of plaintiff’s vehicle. It is not evident whether this damage-causing concrete material was located on the traveled or untraveled portion of the roadway ramp. The highway area where plaintiff’s property damage event occurred was within a roadway construction zone.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$258.94, the complete cost of a replacement tire. Plaintiff contended defendant, Department of Transportation (DOT), should be held liable for her property damage due to negligent maintenance of the roadway. The requisite material filing fee was paid.

{¶ 3} 3) Defendant denied any liability in this matter. Defendant explained plaintiff’s damage incident occurred in a roadway construction zone under the control of DOT’s contractor, Barrett Paving Materials Incorporated (Barrett). Defendant asserted Barrett, by contractual agreement, was responsible for maintaining

{¶ 4} the roadway within the construction area, which included responsibility for repaving the roadway. Therefore, DOT argued Barrett is the proper party defendant in this action. Defendant

implied all duties such as the duty to inspect, the duty to warn, and maintenance duties were delegated when an independent contractor takes control over a particular section of roadway.

{¶ 5} 4) Furthermore, defendant denied that neither DOT nor Barrett had any notice of concrete debris on the traveled portion of the roadway prior to plaintiff's damage occurrence. No repaving work was performed on the State Route 32 ramp until May 7, 2004, eight days after plaintiff's incident.

#### CONCLUSIONS OF LAW

{¶ 6} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation* (2004), 2003-09343-AD, jud.

{¶ 7} 2) 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} 3) In order to recover in any suit involving injury proximately caused by roadway conditions 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. Department of Transportation* (1976), 75-0287-AD.

{¶ 9} 4) 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.

{¶ 10} 5) Plaintiff has not produced any evidence to indicate the length of time the concrete 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 condition appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had

constructive notice of the debris. Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.. Therefore, defendant is not liable for any damage plaintiff may have suffered from the concrete debris.

{¶ 11} 6) Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing debris condition was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the construction area, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

MELINDA ANN REIDY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-06054-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
.....	:	

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:

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For Defendant

RDK/laa  
8/13  
Filed 8/24/04  
Sent to S.C. reporter 9/22/04