

[Cite as *Hemming v. Ohio Dept. of Transp.*, 2004-Ohio-5621.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT HEMMING, SR. :

Plaintiff :

V. :

CASE NO. 2004-07883-AD

OHIO DEPARTMENT OF :  
TRANSPORTATION

## MEMORANDUM DECISION

Defendant

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## FINDINGS OF FACT

{¶ 1} On July 20, 2004, plaintiff, Robert Hemming, Sr., was traveling south on Interstate Route 75 at milepost 50 in Montgomery County, when his automobile struck metal debris laying in the roadway, causing property damage to the vehicle.

{¶ 2} Plaintiff has filed this complaint seeking to recover \$250.00, his insurance coverage deductible<sup>1</sup> 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} 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} Despite filing a response,<sup>2</sup> plaintiff has not submitted any evidence to indicate the length of time that the debris existed in the roadway prior to his July 20, 2004, property damage

<sup>1</sup> See R.C. 2743.02 (D) .

<sup>2</sup> Plaintiff filed a response on September 20, 2004.

event. Plaintiff related that he called the City of Moraine Police Department to notify them of the debris on the roadway.

#### CONCLUSIONS OF LAW

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

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

{¶ 8} 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} 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} No evidence has shown defendant had constructive notice of the debris.

{¶ 11} Furthermore, plaintiff has failed to show defendant negligently maintained its highways.

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