

[Cite as *Edgington v. Ohio Dept. of Transp.*, 2004-Ohio-7084.]

IN THE COURT OF CLAIMS OF OHIO

JOANNE M. EDGINGTON	:	
Plaintiff	:	
v.	:	CASE NO. 2004-06950-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
.....	:	

FINDINGS OF FACT

{¶1} 1) On April 13, 2004, at approximately 9:30 p.m., Harry E. Edgington was driving a Honda Accord LX north on Interstate 270 between the Grove City, Ohio exit and the Georgesville Road exit when the automobile ran over a large object laying on the traveled portion of the roadway. This large object on the roadway caused substantial damage to the Honda Accord LX which is owned by plaintiff, Joanne M. Edgington. The highway area where the April 13, 2004, property damage event occurred was within a roadway construction zone.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$660.70 for automotive repair, plus \$25.00 for filing fee reimbursement.¹ Plaintiff contended defendant, Department of Transportation (DOT), should be held liable for her property damage due to negligent maintenance of the roadway.

{¶3} 3) Defendant denied any liability in this matter.

¹ The filing fee was paid on June 28, 2004.

Defendant explained plaintiff's damage incident occurred in a roadway construction zone under the control of DOT's contractor, Complete General Construction Company (Complete General). Defendant asserted Complete General, by contractual agreement, was responsible for maintaining the roadway within the construction area. Therefore, DOT argued Complete General 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.

{¶4} 4) Furthermore, defendant denied that neither DOT nor Complete General had any notice of any debris material on the traveled portion of the roadway prior to plaintiff's property damage occurrence. On October 14, 2004, plaintiff filed a response to defendant's investigation report. However, plaintiff did not present any evidence to indicate the length of time the debris condition was on the roadway prior to the April 13, 2004, incident.

CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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.

{¶7} 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.

{¶8} 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.

{¶9} 5) Plaintiff has not produced any evidence to indicate the length of time the debris 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 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 appearance of the debris. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the debris.

{¶10} 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 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.

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JOANNE M. EDGINGTON :
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OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE
TRANSPORTATION : DETERMINATION
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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/RDK/laa
10/14
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