

[Cite as *Mosby v. Ohio Dept. of Transp.*, 2005-Ohio-3974.]

IN THE COURT OF CLAIMS OF OHIO

MARILYN MOSBY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04594-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On July 2, 2004, at approximately 5:15 a.m., plaintiff, Marilyn Mosby, was traveling south on Interstate 71 about fifty feet east of the W. 150th Street exit in Cleveland, when her automobile struck a large rock laying in the traveling portion of the roadway. The rock debris which plaintiff's car struck caused damage to the vehicle's tire and rim. Plaintiff related a local police officer was at the scene at the time of the incident, but could not prevent the property damage occurrence.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$250.00, her insurance coverage deductible for automotive repair related to the July 2, 2004, incident. Plaintiff has contended defendant, Department of Transportation ("DOT"), should be held liable for her property damage due to negligent maintenance of the roadway. The filing fee was paid.

{¶ 3} 3) Defendant denied liability for plaintiff's damage based on the assertion DOT had no knowledge of the debris condition prior to plaintiff's property damage event. Defendant claimed it was unaware of how long the rock was on the roadway before the July 2,

2004, incident. Defendant explained the damage-causing rock had been thrown onto the roadway by an unidentified third party. Defendant related that although local police were at the scene (milepost 240.75 on Interstate 71 in Cuyahoga County) DOT did not receive any information from police about rocks on the roadway. In fact, DOT denied receiving any calls or complaints about rock debris on Interstate 71 prior to the incident forming the basis of this claim.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} In order to recover in any suit involving injury proximately caused by roadway conditions including debris, 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.

{¶ 6} 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.

{¶ 7} Plaintiff has not produced any evidence to indicate the length of time the 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 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.

{¶ 8} Finally, 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 roadway debris.

IN THE COURT OF CLAIMS OF OHIO

MARILYN MOSBY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04594-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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

RDK/laa
6/30
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