[Cite as *Ruminski v. Ohio Dept. of Transp.*, 2005-Ohio-4223.]

IN THE COURT OF CLAIMS OF OHIO

DEBORAH J. RUMINSKI	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05213-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On February 16, 2005, at approximately 5:53 a.m., plaintiff, Deborah J. Ruminski, was traveling west on State Route 322 (Mayfield Road) just east of the Fox Hill Drive intersection in Gates Mills, Ohio, when her automobile struck asphalt debris in the roadway causing substantial damage to the vehicle. State Route 322 in Gates Mills is a divided four lane highway with an asphalt curbed grass center medium strip dividing the east and westbound lanes of travel. Plaintiff related the damage-causing asphalt debris her car struck were pieces that had broken from the curbing along the center median divider on Mayfield Road. Specifically, plaintiff stated, "I was traveling westbound on Mayfield [and a] snowplow which was traveling eastbound hit a section of curbing and threw it into the westbound lanes." According to plaintiff, her vehicle then struck the curbing material which had been deposited in her roadway lane of travel by a snowplow. Plaintiff contended the snowplow which dislodged the curbing material on the roadway median was owned by defendant, Department of Transportation ("DOT"), and operated by DOT personnel.

{¶ 2} Plaintiff filed this complaint seeking to recover

$1,654.95, her total cost of car repair resulting from striking the asphalt roadway debris on February 16, 2005. Plaintiff has asserted her property damage was proximately caused by negligence on the part of DOT's employees in conducting snow removal operations on February 16, 2005. It is unclear from the information contained in plaintiff's complaint whether or not she actually witnessed a snowplow traveling east on State Route 322, plow up median curbing material causing the material to be deposited into the westbound lane of State Route 322.

{¶ 3} Defendant denied any liability in this matter. Defendant acknowledged the damage-causing asphalt curbing material, "was deposited by a snowplow," onto the westbound lane of Mayfield Road. However, defendant denied the debris plaintiff's car struck was deposited on the roadway by a DOT snowplow. Defendant suggested a snowplow owned and operated by an employee of Gates Mills, Ohio, exited Fox Hills Drive, drove across the westbound lanes of Mayfield Road, and struck a corner of the roadway median divider curbing with its plow blade, causing pieces of the asphalt curbing material to break off and be deposited in a near westbound lane of Mayfield Road. This snowplow, according to defendant's representation, then drove east on Mayfield Road. Defendant explained it does not operate snowplows on Fox Hills Drive. Therefore, defendant denied a DOT snowplow emerged from Fox Hills Drive, drove across the westbound lanes of Mayfield Road, and damaged the asphalt curb of the median dividing the east and west lanes of Mayfield Road.

{¶ 4} Defendant maintained submitted photographs of the roadway area support its opinion the damage-causing curbing material was moved onto Mayfield Road by a Gates Mills snowplow or some other

snow removal vehicle not owned or controlled by DOT. Defendant provided information establishing DOT conducts snow removal operations on Mayfield Road. Defendant specifically denied DOT has snow removal responsibilities for Fox Hill Drive. Defendant neither admitted nor denied DOT snowplows ever travel on Fox Hill Drive as a route of entering or exiting Mayfield Road. Defendant essentially denied any DOT snowplow dislodged any asphalt curbing at any point on the median strip dividing the east and west lanes of Mayfield Road near the intersection of Fox Hill Drive.

{¶ 5} Both plaintiff and defendant submitted photographic evidence showing Mayfield Road near the intersection of Fox Hill Drive. These photographs depict the median divider on Mayfield Road and show a substantial portion of dislodged asphalt curbing on the median. The dislodged curbing material is displayed at the edge of the median where a crossover exists between the east and west lanes of Mayfield Road and along the berm line of the near westbound lane. Defendant speculated a snowplow, not owned by DOT, traveling south or southeast through the median crossover dislodged curbing material. Plaintiff stated a snowplow traveling east on Mayfield Road dislodged asphalt curbing along the median at the eastbound road lane.

{¶ 6} Not only has defendant denied the roadway debris condition was caused by a DOT vehicle, but defendant has denied having any knowledge of asphalt curbing material on Mayfield Road prior to plaintiff's damage event. Defendant did not receive any calls or complaints about roadway debris on Mayfield Road prior to February 16, 2005. Defendant surmised the asphalt curbing material was likely present on the roadway for "a very short period of time" before plaintiff's incident. Defendant expressed the belief the

asphalt material was deposited on the roadway a short time before plaintiff encountered the hazardous condition. Defendant again denied any act by DOT was "the cause of the debris" or having any prior knowledge of the debris condition.

{¶ 7} Plaintiff's husband, Donald Ruminski, a designated witness to the February 16, 2005, injury damage or loss, filed a response to defendant's investigation report of the incident. Despite the fact Donald Ruminski is not a party to this action and there is no mechanism, either by statute or local rule, to permit a response from a nonparty, the court shall treat the filing as a witness statement. In essence, Mr. Ruminski contended prior notice of roadway debris is not an issue in this claim since the debris condition was caused by DOT personnel operating a DOT snow removal vehicle on Mayfield Road.

{¶ 8} 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. Additionally, defendant has a duty to exercise reasonable care for the motoring public when conducting snow removal operations. *Andrews v. Ohio Department of Transportation* (1998), 97-07277-AD.

{¶ 9} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, approved and followed. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51.

{¶ 10} Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. However, proof of notice of a dangerous condition is not necessary when defendant's own personnel actively cause such condition, as appears to be the situation in the instant matter. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861. In the instant claim, plaintiff has presented sufficient evidence to prove her property damage was caused by the acts of DOT personnel in conducting snow removal operations. See *McFadden v. Ohio Dept. of Transportation*, 2004-02881-AD, 2004-Ohio-3756. It appears to the trier of fact the damage-causing debris in the present claim was

deposited on the roadway by a DOT vehicle performing snow removal on Mayfield Road. Defendant is therefore liable to plaintiff for all damages claimed.

IN THE COURT OF CLAIMS OF OHIO

DEBORAH J. RUMINSKI	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05213-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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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 plaintiff in the amount of $1,679.95, which includes the filing fee. Court costs are assessed against defendant. 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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RDK/laa

6/30
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