

[Cite as *Robertson v. Ohio Dept. of Transp.*, 2005-Ohio-5745.]

IN THE COURT OF CLAIMS OF OHIO

TRUDY ROBERTSON	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04900-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>ENTRY OF DISMISSAL</u>
Defendant	:	

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{¶ 1} On April 4, 2005, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on February 6, 2005, while traveling between Columbus and Dayton on Interstate 70, "I heard something hit the front of my car. When I inspected the car, there was a huge hole in my bumper. Inside the hole was a huge piece of steel with blacktop and 'bridge spray' paint on it." Plaintiff does not provide a specific or even general location where the incident occurred. Plaintiff seeks reimbursement for a front bumper cover in the amount of \$397.50. Plaintiff submitted the filing fee with the complaint.

{¶ 2} On May 20, 2005, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} "Defendant had received a call from plaintiff's husband on February 15, 2005, stating that his wife was driving on I-70 and something flew up like metal from a bridge and damaged the car she was driving (See Exhibit A). Defendant investigated the distance between Columbus and Dayton and this covers four counties, Franklin, Madison, Clark and Montgomery, which is 72 miles long (See Map and Exhibit B). Maintenance Engineers for these counties were contacted and they researched their records for the past six

months to see if there were any complaints with metal coming up from the bridges on I-70 and nothing was found. The description in the complaint is different than that given by the husband in early February so the maintenance records for these four counties were looked at for debris on the roadway, mainly reflectors since this seems to be the description given in the complaint. The Department had conducted hundreds of maintenance operations on I-70 for the past six months and the entries for Litter Patrol are highlighted (See Exhibit C). ODOT work crews were doing activities such that if there was a noticeable defect with any raised or loosened pavement makers it would have immediately been repaired.

{¶ 4} "In the present case, the plaintiff has failed to prosecute her cause of action as required by Civ.R. 41(B)(1) because she is not sure where she encountered the debris on the roadway."

{¶ 5} On August 19, 2005, plaintiff filed a response to defendant's motion to dismiss. Plaintiff provided pictures of the object but did not address the issue of where the object was located on Interstate 70 between Dayton and Columbus.

{¶ 6} Civ.R. 12(E) requires that a pleading not be so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading. In the case at bar, plaintiff alleges her damage occurred along a 72 mile stretch of highway. She did not present any evidence which would allow the defendant to conduct a meaningful investigation, if in fact the object she struck had a connection to or relationship with the actions or inactions of the defendant. Furthermore, defendant has a 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.

{¶ 7} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Trudy Robertson
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Plaintiff, Pro se

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On June 27, 2005, plaintiff filed a motion for extension of time to respond to defendant's motion to dismiss. Upon review, plaintiff's motion is GRANTED, and the response shall be filed within 30 days of the date of this entry.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Trudy Robertson
191 Aspen Way
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Plaintiff, Pro se

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