

narrative recollection of the incident and a description of the snowplow vehicle. Plaintiff recalled the snowplow vehicle was a "white truck/yellow snow blade/ big truck . . . red stripe across blade at the bottom." Plaintiff could not identify the snowplow vehicle as a city, state, county, or privately owned vehicle. Furthermore, the recording officer of the incident report noted the description of the snowplow vehicle provided by the passenger in plaintiff's truck was not specific enough to identify the owner or agency involved in operating the snowplow vehicle.

{¶ 3} 3) Defendant denied any liability in this matter. Although defendant acknowledged DOT salt trucks were operating on US Route 42 in Warren County on January 16, 2005, defendant contended plaintiff failed to prove the damage to his truck was caused by a vehicle owned by DOT and operated by DOT personnel. Defendant suggested other jurisdictions such as Warren County or the City of Warrensville could have dispatched snowplow vehicles on US Route 42 and perhaps one of these vehicles, owned and operated by a political subdivision, was actually responsible for plaintiff's property damage. Defendant submitted evidence showing a DOT salt truck was conducting snow and ice removal on US Route 42 at 11:00 a.m. on January 16, 2005.

CONCLUSIONS OF LAW

{¶ 4} Defendant has the duty to keep the roads 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 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} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a

duty to exercise reasonable care in conducting its roadside maintenance activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD.

{¶ 6} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77. Plaintiff has the burden of proving, by a preponderance of the evidence, that he 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.

{¶ 7} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to him or that his injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *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. Plaintiff has failed to provide sufficient evidence to prove defendant operated a snowplow vehicle in a negligent manner or any conduct of DOT was the substantial or sole cause of plaintiff's property damage. Plaintiff has failed to prove, by a

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