



negligence on the part of defendant, Department of Transportation ("DOT") in conducting roadway edge line painting on July 18, 2004. Consequently, plaintiff filed this complaint seeking to recover \$1,076.90, for paint removal costs incurred, plus associated damages. Plaintiff paid the filing fee.

{¶ 2} On July 21, 2004, a DOT employee, Mark Stanley, inspected the roadway area where plaintiff claimed her paint damage incident occurred. Stanley located the subject roadway as Interstate 70 east to the State Route 4 south exit to the State Route 235 north ramp. Upon inspecting the area, Stanley reported discovering "newly painted white edge line, but no white lane lines nor yellow edge lines." Stanley suggested a paint striper truck may have, "hit this by accident and was at the wrong location."

{¶ 3} Defendant denied any DOT personnel conducted edge line painting operations on July 18, 2004 in the vicinity of plaintiff's damage occurrence. Defendant denied engaging any contractor to perform edge line painting on the particular roadway in question on July 18, 2004. Plaintiff has not produced sufficient evidence to establish her vehicle received paint damage as a result of any activity under the control of defendant.

{¶ 4} Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 5} 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.

{¶6} Plaintiff has the burden of proof to show her property damage was the direct result of failure to defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, plaintiff has failed to prove her property damage was caused by any negligent act or omission on the part of defendant.

{¶7} 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 her property damage was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the 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.

IN THE COURT OF CLAIMS OF OHIO

WANDA L. ROY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-09452-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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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