

[Cite as *Kapucinski v. Ohio Dept. of Transp.*, 2005-Ohio-616.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH J. KAPUCINSKI :
Plaintiff :
v. : CASE NO. 2004-08367-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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{¶ 1} Plaintiff, Joseph J. Kapucinski, asserted he suffered property damage to his truck while traveling on State Route 57 in Lorain County on July 12, 2004. Specifically, plaintiff stated his truck was damaged when the roof of his vehicle was struck by a piece of concrete spalling from a bridge spanning State Route 57. Plaintiff identified the bridge spanning the roadway as the Interstate 90 West overpass. On July 28, 2004, and again on August 4, 2004, plaintiff reported this property damage incident to the Ohio State Highway Patrol.

{¶ 2} Plaintiff contended defendant, Department of Transportation ("DOT"), should be responsible for repairing the damage to his truck. Consequently, plaintiff filed this complaint seeking to recover \$330.35, costs associated with repairing the roof of his truck, plus \$25.00 for filing fee reimbursement. The requisite material filing fee was paid.

{¶ 3} Defendant denied any liability in this matter. After being notified of plaintiff's incident, defendant sent DOT employee, Tom Smith, to the Interstate 90 overpass bridge site. Smith noted he visually inspected the bridge and did not see any

surface areas indicating spalling or dislodged structural concrete. Furthermore,

{¶ 4} DOT employee, Marlin Wengerd, also inspected the bridge area where plaintiff asserted his truck was damaged. Wengerd related he, "looked for loose concrete on or under the bridge and for evidence that concrete may have recently fall from the bridge."

After making this visual inspection, Wengerd observed, "{n}o spalling was evident on the under side of the concrete deck nor was there any loose concrete along the curb line of the driving surface of I90 over SR 57." Wengerd acknowledged he, "did find a small piece of rebar just north of this overpass along SR 57," but he did not think the rebar fell from the bridge spanning State Route 57. Wengerd did not express any opinion concerning the origin of the rebar. When plaintiff first reported his damage incident to the Ohio State Highway Patrol, he recalled his truck was hit with a piece of falling concrete and he stated he saw pieces of concrete and rebar along the roadside under the bridge. Defendant contended plaintiff has failed to produce sufficient evidence to establish his truck was damaged by falling debris emanating from a bridge under DOT's control.

{¶ 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. DOT has the duty to maintain the system of highways free from unreasonable risk of harm by exercising ordinary reasonable care. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 42. However, DOT is not an insurer of the safety of its highways. *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 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. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. 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} This court has previously held DOT liable for property damage resulting from falling debris. *Elsey v. Dept. of Transportation* (1989), 89-05775-AD. This court, as the trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, plaintiff failed to show the damage-causing object was connected to any act or omission on the part of defendant, defendant was negligent in maintaining the area, or any other negligence on the part of defendant. *Brzuskiewicz v. Dept. of Transportation* (1998), 97-12016-AD; *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.

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DEPARTMENT OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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 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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RDK/laa
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