[Cite as *Drysdale Direct Express v. Ohio Dept. of Transp.*, 2006-Ohio-335.]

IN THE COURT OF CLAIMS OF OHIO

DRYSDALE DIRECT EXPRESS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07062-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶ 1} On May 13, 2005, at approximately 11:00 p.m., a vehicle owned by plaintiff, Drysdale Direct Express, Inc., was allegedly damaged while traveling west on Interstate 70 "about 100 yards east of mile marker 200" in Belmont County or Guernsey County. Specifically, plaintiff pointed out a road construction sign mounted on a spring blew into the side of the Drysdale Direct Express, Inc. vehicle causing damage to the driver's side mirror. Plaintiff filed this complaint seeking to recover $527.84, the cost of a replacement side-view mirror. Plaintiff contended this property damage was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT") in maintaining or installing a roadway sign. The filing fee was paid.

{¶ 2} Defendant denied any liability in this matter. Defendant denied any DOT personnel from either Belmont County or Guernsey County utilized any signage on Interstate 70 on May 13, 2005, around milepost 199. Defendant suggested any damage-causing road sign was probably installed by some other entity than DOT. Defendant denied having any knowledge of a defective sign.

{¶ 3} Defendant did not receive any calls or complaints regarding a problem with a sign on Interstate 70. Defendant

asserted plaintiff did not submit sufficient proof that the damage to its vehicle was proximately caused by a breach of a duty owed by DOT to motorists.

CONCLUSIONS OF LAW

{¶ 4} 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 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 or construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Plaintiff, in the instant claim, has failed to prove defendant negligently maintained the roadway.

{¶ 6} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective sign and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. For constructive notice to be proven, plaintiff must show sufficient time has elapsed after the dangerous condition (sign) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Department of Transportation* (1978), 78-0126-AD. The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in

respect to the time the defective condition (sign) appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. Evidence has shown defendant did not have any notice, either actual or constructive, of the damage-causing sign on the roadway.

{¶ 7} 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.

{¶ 8} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed or that the property damage was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was attributed 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. Consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

DRYSDALE DIRECT EXPRESS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-07062-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 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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