

[Cite as *Kelly v. Ohio Dept. of Transp.*, 2006-Ohio-368.]

IN THE COURT OF CLAIMS OF OHIO

PAMELA C. KELLY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09821-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
: : : : : : : : : : : : : : : :		

FINDINGS OF FACT

{¶ 1} 1) On May 20, 2005, at approximately 4:45 p.m, plaintiff, Pamela C. Kelly, was traveling on the Interstate 670 Broad Street Exit in Columbus, when her automobile struck debris laying on the roadway. The debris caused substantial property damage to plaintiff's vehicle (punctured oil and transmission pans).

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$475.00, her complete cost of automotive repair resulting from the May 20, 2005, incident. Plaintiff asserted defendant, Department of Transportation ("DOT"), should bear liability for her property damage. The requisite filing fee was paid and plaintiff requests reimbursement of that amount.

{¶ 3} 3) Defendant denied having any knowledge of debris on the roadway prior to plaintiff's May 20, 2005, incident. Defendant suggested the debris plaintiff's vehicle struck had probably been on Interstate 670 for a short period of time before plaintiff encountered the condition. Furthermore, defendant explained DOT litter patrol crews conducted operations in the area of plaintiff's damage occurrence on May 9, 2005. No debris was discovered.

CONCLUSIONS OF LAW

{¶ 4} 1) 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} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (debris) 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 (debris) 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 (debris) 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 debris.

{¶ 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 *Meniffee 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 she 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 her or that her 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. Consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

PAMELA C. KELLY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09821-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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/laa
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