

[Cite as *Clevenger v. Ohio Dept. of Transp.*, 2006-Ohio-7167.]

IN THE COURT OF CLAIMS OF OHIO

JULIE D. CLEVINGER	:	
Plaintiff	:	
v.	:	CASE NO. 2006-01181-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On December 6, 2005, at approximately 1:35 p.m., plaintiff, Julie D. Clevenger, was traveling eastbound on Interstate 90, "approximately 1 mile before the Crocker/Bassett Rd. Exit," in Cuyahoga County, when her automobile struck an object laying in the roadway. The object, which plaintiff stated, "looked like a black chunk of ice and appeared to be flat," caused tire and rim damage to plaintiff's vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$401.88, the entire cost for replacement parts. Plaintiff asserted she sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for \$125.00 for her mother missing a court appearance due to the December 6, 2005, property damage incident. The filing fee was paid.

{¶ 3} 3) Defendant has denied liability based on the fact it had no knowledge the debris condition was on the roadway.

{¶ 4} 4) Plaintiff has not presented any evidence to indicate the length of time the debris condition was on the roadway prior to her property-damage occurrence.

CONCLUSIONS OF LAW

{¶ 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 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} 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. Dept. 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. 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.

{¶ 7} Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the debris condition.

{¶ 8} 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 the damage-causing debris condition was connected to any conduct under the control of defendant 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.

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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:

Julie D. Clevenger
 859 Walnut Street
 Elyria, Ohio 44035

Plaintiff, Pro se

Gordon Proctor, Director
 Department of Transportation
 1980 West Broad Street
 Columbus, Ohio 43223

For Defendant

Case No. 2006-01181-AD

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MEMORANDUM DECISION

RDK/laa

3/30

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