

[Cite as *Gershen v. Ohio Dept. of Transp.*, 2006-Ohio-7283.]

IN THE COURT OF CLAIMS OF OHIO

SHERRY M. GERSHEN	:	
Plaintiff	:	
v.	:	CASE NO. 2006-03745-AD
DEPARTMENT OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On April 24, 2006, plaintiff, Sherry M. Gershen, was traveling east on Interstate 90 near milepost 200.80 in Lake County, when her vehicle struck an uprooted road reflector laying on the traveled portion of the roadway. Plaintiff stated the rims of her vehicle were damaged as a result of striking the reflector.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$739.29, her expense incurred for replacing her rims. Plaintiff asserted she incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. The filing fee was paid.

{¶ 3} 3) Defendant has denied liability based on the fact it had no knowledge the defective condition existed prior to plaintiff's incident.

{¶ 4} 4) Plaintiff has not submitted any evidence to indicate the length of time the loosened road reflector was on the roadway surface prior to the April 24, 2006, property damage occurrence.

CONCLUSIONS OF LAW

{¶ 5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶ 6} 2) 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.

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

{¶ 8} 4) There is no evidence defendant had actual notice of the damage-causing reflector.

{¶ 9} 5) 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 (reflector) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has

elapsed after the dangerous condition (loosened reflector) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Department of Transportation* (1978), 78-0126-AD.

{¶ 11} 7) No evidence has shown defendant had constructive notice of the damage-causing reflector.

{¶ 12} 8) Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

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SHERRY M. GERSHEN :

Plaintiff :

v. :

CASE NO. 2006-03745-AD

DEPARTMENT OF TRANSPORTATION :

ENTRY OF ADMINISTRATIVE
DETERMINATION

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

Case No. 2006-03745-AD

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MEMORANDUM DECISION

RDK/laa

8/22

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