

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JIM BEARDSLEY

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2006-07848-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On October 27, 2006, at approximately 6:00 p.m., Airika Beardsley was driving a 2001 Mercury Cougar north on Norton Road just south of Old Sullivant, when the vehicle, “hit a sunken manhole,” about two inches lower than the existing road surface. The impact of striking this described roadway defect caused tire, rim, and tie rod damage to the Mercury Cougar. The roadway area where the October 27, 2006, incident occurred was located within a construction zone on Norton Road in Franklin County.

{¶2} Plaintiff, Jim Beardsley, the father of Airika Beardsley, filed this complaint seeking to recover \$656.03, the car repair expense he paid resulting from the October 27, 2006, property damage event. Plaintiff contended the damage to the Mercury Cougar was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in properly maintaining a roadway in a construction area to keep the roadway surface area free of hazardous conditions, such as the sunken manhole described. The filing fee was paid.

{¶3} Defendant acknowledged the portion of the roadway where plaintiff’s property damage occurred was located within a construction zone. Defendant explained this roadway construction zone was under the control of DOT contractor, Complete General Construction Company (“Complete”). Therefore, DOT implied all duties, such as the duty to inspect, the duty to warn, and any maintenance duties were delegated when an independent contractor takes control over a particular section of roadway. Complete was charged with conducting the particular roadway construction project in accordance with DOT specifications. Defendant retained a Project Engineer at the construction site who recorded a Daily Diary Report. Defendant asserted that neither DOT nor Complete were aware of any problems with manhole covers on Norton Road prior to October 27, 2006. The Daily Diary Report does not contain any notation about any defective condition regarding manhole covers. Defendant contended plaintiff failed to offer sufficient evidence to prove his property damage was proximately caused by any negligent act or omission in maintaining the construction project.

{¶4} Defendant submitted a written statement from Complete Project Supervisor, Eric Grassbaugh, concerning the “sunken manhole” on Norton Road. Grassbaugh explained the manholes, “within the limits of the temporary pavement,” in the construction area were owned by AT&T and were paved over by Complete personnel in September and October, 2006. According to Grassbaugh, it was agreed the paved over manholes would

Case No. 2006-07848-AD	- 6 -	MEMORANDUM DECISION
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be uncovered by AT&T if access to the manhole was needed during the time the roadway was subject to temporary pavement conditions. Grassbaugh recorded, “[a]round October 23rd (2006), AT&T asked us to help them by jack hammering the asphalt off of the manhole casting in question because they did not have the right equipment to remove the asphalt and they needed access to the manhole.” Grassbaugh additionally recorded, “Later that week I received a phone call from a representative of AT&T letting me know that they had finished working in the manhole and wanted to know if they needed to repave over the manhole and I stated that I could not make that decision and told them they would have to ask Tom Lau,” (DOT’s Project Engineer). Grassbaugh noted he subsequently received a phone call from an AT&T representative who informed him, Tom Lau was contacted and advised the manhole did not require repaving, because the deviation between the exposed manhole and the paved roadway as less than 1.5”.

{¶15} Defendant did not include any statement from DOT Project Engineer Tom Lau regarding the exposed manhole cover. The October 27, 2006, Daily Diary Report submitted by defendant that Lau recorded does not mention any roadway conditions involving problems with manholes. Plaintiff submitted a photograph of the roadway area depicting the described, “sunken manhole.” The undated photograph shows a large depression in the traveled portion of the roadway. From a viewing of the photograph the trier of fact is unable to make any estimations regarding the depth of this roadway depression. Defendant observed the depression was patched with cold mix in late November, 2006, after concerns were expressed. Defendant denied any conduct by DOT or Complete personnel caused the property damage claimed. Defendant stated, “[t]he manhole was less than 1.5” deep and shouldn’t have caused this much damage if the driver was going 35 mph as was posted for this work zone.” No evidence was produced in regard to the speed plaintiff’s vehicle was traveled at the time the October 27, 2006, property damage event occurred.

{¶16} Defendant has the duty to maintain its highway in a reasonably safe condition

Case No. 2006-07848-AD	- 7 -	MEMORANDUM DECISION
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for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety 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. The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation*, 2003-09343-AD, jud, 2004-Ohio-151.

{¶7} Although defendant acknowledged DOT personnel were aware of the pavement condition represented in this claim, defendant denied its subsequent reaction and conduct constitute actionable negligence. Despite defendant's contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with duties to inspect the construction site and correct any known deficiencies in connection with particular construction work. See *Roadway Express, Inc. v. Ohio Dept. of Transp.* (June 28, 2001), Franklin App. No. 00AP-1119, 2001 Ohio App. LEXIS 2854.

{¶8} However, in order to find liability for a damage claim occurring in a construction area, the court must look at the totality of the circumstances to determine whether DOT acted in a manner to render the highway free from an unreasonable risk of harm for the traveling public. *Feichtner v. Ohio Dept. of Transp.* (1995), 114 Ohio App. 3d 346. In fact the duty to render the highway free from unreasonable risk of harm is the precise duty owed by DOT to the traveling public under both normal traffic conditions and during highway construction projects. See e.g. *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42; *Rhodus*, supra, at 729; *Feichtner*, supra, at 354.

{¶9} In the instant claim, plaintiff has submitted sufficient evidence to show a known hazardous condition existed on the roadway and neither DOT nor its agents timely corrected the condition. Plaintiff has proven his damage was caused by negligent acts or omissions on the part of DOT and DOT's agents. Therefore, defendant is liable to plaintiff

Case No. 2006-07848-AD	- 8 -	MEMORANDUM DECISION
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for the damage claimed plus filing fees.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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 plaintiff in the amount of \$681.03, which includes the filing fee. Court costs are assessed against defendant. 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:

Jim Beardsley
6700 Alkire Road
Galloway, Ohio 43119

James Beasley, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
4/13
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