

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

KIMBERLY WILLIAMS

Case No. 2007-01096-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

OHIO DEPARTMENT OF
TRANSPORTATION, DISTRICT 8

Defendant

FINDINGS OF FACT

{¶1} On September 2, 2006, at approximately 4:50 a.m., plaintiff, Kimberly Williams, was traveling south on Interstate 75, “approximately 3/10 of a mile south of the Middletown exit 38,” when she observed a deer carcass laying on the roadway. Plaintiff stated she was moving at a speed of 45-50 mph when she attempted to avoid striking the deer carcass by swerving her vehicle, a 1995 Buick Regal, to the left. However, plaintiff related she was unable to control her car as she steered to avoid the deer carcass obstruction and drove off the roadway striking installed median cables and causing substantial damage to her automobile in the process. Plaintiff asserted the damage to her vehicle included: “[d]amage to the front grill and left headlight, right headlight knocked out, [f]ront windshield cracked on right passenger side, [d]amage to the right side front fender, door and rear body panel, [b]roke right rear wheel assembly, [d]amage to right rear tire (torn from car) and brake, [d]eep scratches to hood, roof and sunroof.”

{¶2} Plaintiff has contended the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to remove an obstruction (deer carcass) from the traveled portion of the roadway. Plaintiff filed this complaint seeking to recover \$2,500.00, the statutory maximum amount recoverable in an Administrative Determination. Plaintiff explained the cost of automotive repair for her vehicle exceeds its value. The filing fee was paid.

{¶3} Defendant denied any liability for plaintiff’s damage. Defendant denied having any knowledge of the debris condition (deer carcass) prior to plaintiff’s incident. Plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to her property damage occurrence. Defendant conducts frequent litter inspections and litter pick-up operations in the area of plaintiff’s September 2, 2006, property damage event. Defendant denied receiving any calls or complaints about debris on the roadway at milepost 32.20 on Interstate 75 in Warren County (the approximate location of plaintiff’s damage occurrence). Defendant suggested the debris existed at that location, “for only a relatively short amount of time before plaintiff’s incident.”

CONCLUSIONS OF LAW

{¶4} Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App.

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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.

{¶5} In order to recover in any suit involving injury proximately caused by roadway conditions including debris, plaintiff must prove either: 1) defendant had actual or constructive notice of the 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.

{¶6} Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶7} Plaintiff has not produced any evidence to indicate the length of time the debris condition was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the debris. Additionally, 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 debris appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262.

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

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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:

Kimberly Williams
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James Beasley, Director
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RDK/laa
3/22
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