[Cite as *Rodgers v. Ohio Dept. of Transp., Dist. 12*, 2007-Ohio-5287.]

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

BETTY RODGERS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2007-04346-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Betty Rodgers, stated she suffered property damage to her truck tire when the vehicle, "ran over a sharp object," while traveling on State Route 176 at Spring Road in Cuyahoga County. Plaintiff recalled the incident occurred on March 7, 2007, at approximately 5:15 a.m.

{¶2} 2) Plaintiff implied the damage to her truck was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to maintain the roadway free of dangerous debris. Consequently, plaintiff filed this complaint seeking to recover $112.88, the cost of a replacement tire. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of debris on the roadway prior to plaintiff's damage occurrence. Defendant noted DOT records show a complaint regarding litter on State Route 176 at the Spring Road exit was received on March 2, 2007. However, the records indicate the litter condition (a bundle of cable on the roadway) was removed. Defendant asserted plaintiff failed to offer evidence establishing the length of time the particular debris condition was on the roadway prior to her property damage event. Defendant suggested the debris condition, "existed in 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 highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶5} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. Defendant is only liable for roadway condition of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 507 N.E. 2d 1179.

{¶6} 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, 577 N.E. 2d 458. There is no indication defendant had constructive notice of the 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. 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 proximate cause of her property damage was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the roadway area or that there was 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.

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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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Betty Rodgers
8006 Liberty Avenue
Parma, Ohio 44129-1315

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RDK/laa
7/25
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