

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

WAYNE ESTES

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-06373-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Wayne Estes, asserted that his 1994 Chrysler Concorde was damaged on April 19, 2007, when the vehicle struck steel debris protruding from the roadway surface in a construction area on State Route 8 in Summit County. Plaintiff stated that he was, “traveling south on Rt. 8 between 271 and I 80 before the intersection of E. Twinsburg Rd.,” through a construction zone when the property damage incident occurred. Plaintiff related as he was driving through the construction area traffic slowed and became congested. Plaintiff further related while traveling in this congested traffic pattern the front end of his car caught on “a piece of steel or rebar [that] was sticking up out of the road in a piece of concrete.” According to plaintiff, the metal debris tore through the front exhaust of his automobile and caused additional damage to the car’s frame, gas tank, fuel lines, and rear frame cross member when the vehicle rode over it.

{¶2} 2) Plaintiff observed that the damage-causing debris material, “was part of the road being repaired” in the construction area. Plaintiff contended that this metal object that damaged his vehicle emanated from the construction activity on State Route 8. Plaintiff implied that the damage to his automobile was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to

maintain a safe hazard free roadway in a construction zone. Consequently, plaintiff filed this complaint seeking to recover \$2,019.03, the total cost of automotive repair resulting from the described April 19, 2007, incident. The filing fee was paid.

{¶3} 3) Defendant acknowledged that the alleged incident occurred within a construction zone which DOT located at milepost 16.13 on State Route 8 in Summit County. Defendant explained that DOT contractor, Beaver Excavating Company (Beaver), had control over the repaving construction project on State Route 8 from milepost 15.63 to 18.05. Defendant asserted Beaver, by contractual agreement, was responsible for maintaining the roadway within the construction project limits. Therefore, DOT argued that Beaver is the proper party defendant in this action. All work performed by Beaver was subject to DOT guided specifications and requirements. Defendant essentially contended that all duties, attributed to DOT, such as the duty to inspect, the duty to warn, and all maintenance duties were delegated when an independent contractor takes over a particular section of roadway for construction purposes.

{¶4} 4) Alternatively, defendant denied that neither DOT nor Beaver had any notice of a piece of steel on State Route 8 prior to plaintiff's claimed property damage occurrence. Defendant related that no calls or complaints were received regarding a piece of steel on the roadway prior to April 19, 2007. Defendant pointed out that DOT first learned about the damage-causing object when a copy of plaintiff's complaint was received.

{¶5} 5) Defendant submitted a copy of correspondence from Beaver Contract Administrator, W. Matt Sterling, regarding plaintiff's damage complaint. Sterling noted that Beaver first learned of the claimed incident on July 30, 2007, after a considerable amount of work had been completed on State Route 8 since April 19, 2007. Sterling also noted that he reviewed DOT Diaries for April 19, 2007, and discovered that no work was being performed on that day "that would produce any demolished concrete with rebar." Sterling suggested, "that if this object was on the road

it must have fallen off a truck passing through out zone, not one working in our zone.”

{¶6} 6) The DOT Daily Diary Report for April 19, 2007, recorded that excavated asphalt was cleaned up on State Route 8 south of Twinsburg Road. Defendant’s evidence shows dirt, sand, and asphalt grindings were hauled from the construction project area on April 19, 2007. Defendant denied that the hauled materials contained any metal rebar.

CONCLUSIONS OF LAW

{¶7} 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. 2d 335, 3 O.O. 3d 413, 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. 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*, Ct. of Cl. No. 2003-09343-AD, jud, 2004-Ohio-151. 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. No evidence other than plaintiff’s assertion has been produced to show a hazardous condition was maintained by Beaver or DOT. See *Henderson v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2006-05021-AD, 2006-Ohio-7129.

{¶8} Defendant professed liability cannot be established when requisite notice of damage-causing debris conditions cannot be proven. Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. However, proof

or notice of a dangerous condition is not necessary when defendant's own agents actively cause such conditions. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Department of Transportation* (1996), 94-13861. In the instant claim, evidence tends to show the origin of the debris which damaged plaintiff's vehicle did not emanate from construction activity. Defendant insisted the debris condition was not caused by maintenance or construction activity.

{¶9} Generally, 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. 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. 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 roadway debris.

{¶10} In the instant claim, plaintiff has failed to introduce sufficient evidence to prove defendant or its agents maintained a known hazardous roadway condition. Plaintiff failed to prove his property damage was connected to any conduct under the control of defendant, that defendant or its agents were negligent in maintaining the roadway area, or that there was any negligence on the part of defendant or its agents.

Case No. 2007-06373-AD	- 5 -	MEMORANDUM DECISION
------------------------	-------	---------------------

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. Consequently, plaintiff's claim is denied.

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

WAYNE ESTES

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-06373-AD

Clerk Miles C. Durfey

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.

MILES C. DURFEY
Clerk

Entry cc:

Wayne Estes
2095 Dublin Road
Waterford, Pennsylvania 16441

RDK/laa

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

11/30
Filed 12/17/07
Sent to S.C. reporter 2/5/08