

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

CATHY SEFCIK

Case No. 2007-07892-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION, DISTRICT 12

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Cathy Sefcik, stated she was traveling east on Interstate 480 in Garfield Heights, Ohio, “between exits #22 Maple Hts/Granger & #23 Broadway [when] semi truck tire debris was run over by the car in front of me and then hit my car damaging the front end & lights of my car.” Plaintiff recalled the described property damage event occurred on August 24, 2007, at approximately 9:00 p.m.

{¶2} 2) Plaintiff implied the damage to her vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous condition on Interstate 480 in Cuyahoga County. Consequently, plaintiff filed this complaint seeking to recover \$250.00, her insurance coverage deductible¹ for automotive repair costs incurred resulting from the August 24, 2007, occurrence. The \$25.00 filing fee was paid and plaintiff seeks recovery of that amount along with her damage claim.

¹ R.C. 2743.02(D) states:

“(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.”

Case No. 2007-07892-AD	- 2 -	MEMORANDUM DECISION
------------------------	-------	---------------------

{¶3} 3) Defendant denied any DOT personnel had any knowledge of roadway debris at the particular location plaintiff described prior to 9:00 p.m. on August 24, 2007. Defendant related no calls or complaints were received regarding the particular debris condition on the roadway which DOT located between mileposts 20.75 and 21.54 on Interstate 480 in Cuyahoga County. Defendant suggested the debris that damaged plaintiff's car probably, "existed in that location for only a relatively short amount of time before plaintiff's incident." Defendant observed DOT conducts frequent "Litter Pickup operations" on the roadway and had any debris been noticed prior to plaintiff's damage event, the particular debris condition would have been removed from the roadway. Defendant argued plaintiff failed to offer sufficient evidence to prove DOT negligently maintained the roadway.

{¶4} 4) Defendant's records note a complaint was received on August 24, 2007, regarding "litter/debris on the ramp from 480 WB to Lee Road." Defendant pointed out this complaint about debris on the roadway placed the condition on westbound Interstate 480 not eastbound Interstate 480, the location plaintiff reported where the truck tire that damaged her car was situated. Plaintiff filed a response insisting the truck tire debris that struck her car was the same debris condition reported to defendant on August 24, 2007. Plaintiff stated, "[t]he debris was located on both the east and west bound lanes of the highway." In her complaint plaintiff recalled the damage causing roadway debris was located between the Granger Road exit and the Broadway Road exit. Submitted records from defendant show the described area spans from milepost 20.75 to 21.54. The location of the debris reported to DOT on August 24, 2007 (time received unknown) was on the Interstate 480 westbound ramp to Lee Road or milepost 22.41.

CONCLUSIONS OF LAW

{¶5} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an

Case No. 2007-07892-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

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.

{¶6} 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, 31 OBR 64, 507 N.E. 2d 1179.

{¶7} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (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. For constructive notice to be proven, plaintiff must show that sufficient time has elapsed after the dangerous condition (debris) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation* (1978), 78-0126-AD. The trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time that the defective condition (debris) appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. Evidence has shown defendant did not have any notice, either actual or constructive, of the damage-causing debris.

{¶8} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, 1090 ¶8 citing *Meniffee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d

Case No. 2007-07892-AD	- 4 -	MEMORANDUM DECISION
------------------------	-------	---------------------

707. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶19} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing object was connected to any conduct under the control of defendant, or 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. Consequently, plaintiff's claim is denied.

Case No. 2007-07892-AD

- 5 -

MEMORANDUM DECISION

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

CATHY SEFCIK

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION, DISTRICT #12

Defendant

Case No. 2007-07892-AD

Deputy Clerk Daniel R. Borchert

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:

Cathy Sefcik
8374 Melody Lane
Macedonia, Ohio 44056

RDK/laa

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

11/30

Filed 12/28/07

Sent to S.C. reporter 2/5/08