[Cite as *Merriweather v. Dept. of Transp.*, 2008-Ohio-1211.]

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 MERRIWEATHER

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-07248-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On July 28, 2007, at approximately 9:00 p.m., plaintiff, Kimberly Merriweather, was traveling east on Interstate 70 in Franklin County, when her automobile ran over a sofa cushion laying on the traveled portion of the roadway. Plaintiff explained that when she drove over the sofa cushion it wrapped around the axel and drive shaft of her automobile causing substantial damage to the vehicle.

{¶2} 2) Plaintiff implied the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to keep the roadway free of debris such as the discarded sofa cushion. Consequently, plaintiff filed this complaint seeking to recover $309.77, the cost of replacement parts and repair expenses resulting from the described incident. Plaintiff paid the $25.00 filing fee and requested reimbursement of that amount in addition to her damage claim.

{¶3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the debris at milepost 100.00 on Intestate 70 in Franklin County prior to 9:00 p.m. on July 28, 2007. Defendant denied the roadway was negligently maintained. Defendant asserted DOT crews conduct frequent litter patrols on Interstate 70 in Franklin County and had any DOT employees discovered any debris on the roadway prior to plaintiff's incident, the debris would "have immediately

been removed from the roadway."

{¶4} 4) Plaintiff did not submit any evidence to establish the length of time the debris condition was on the roadway prior to 9:00 p.m. on July 28, 2007.

CONCLUSION OF LAW

{¶5} 1) 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 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} 2) 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} 3) Plaintiff has not produced any evidence to indicate the length of time any debris condition was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown 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 sofa cushion. 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.

{¶8} 4) 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 the debris 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. Plaintiff has failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiff's property damage.

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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:

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RDK/laa

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