

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

BEULAH WILLIAMS

Plaintiff

v.

DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-05563-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Beulah Williams, stated she was traveling west on Interstate 480 between Oberlin and Elyria when her van ran over an object which had fallen from a truck traveling in front of her vehicle. Plaintiff related the debris on the roadway she drove over caused tire and rim damage to the vehicle. Plaintiff recalled the property damage incident occurred on October 22, 2006, at approximately 3:30 p.m.

{¶2} 2) Plaintiff implied the damage to her van was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in keeping the roadway clear of debris. Plaintiff filed this complaint seeking to recover \$457.84, the cost of replacement parts and repairs associated with the October 22, 2006, described property damage occurrence. The filing fee was paid.

{¶3} 3) Defendant denied any liability for plaintiff’s damage based on the contention no DOT personnel had any knowledge of an object on the roadway prior to the October 22, 2006 incident. Defendant asserted the damage causing debris, which DOT located “between mileposts 6.55 and 16.50 on US 20 in Lorain County,” probably existed on the roadway for a short amount of time prior to plaintiff’s property damage event. Defendant located the described incident on US Route 20 as opposed to Interstate 480 as plaintiff indicated. Defendant explained Interstate 480, “does not run

between Oberlin and Elyria.” Defendant related DOT’s Lorain County Manager, “conducts roadway inspections on all state roadways within the county on a routine basis, at least one to two times a month.” According to defendant, if any DOT employees discovered any debris on the roadway the debris would have been picked up. Defendant conducted litter patrol operations in the area of plaintiff’s October 22, 2006 incident on October 20, 2006.

{¶14} 4) Defendant noted DOT did not receive any prior complaints regarding debris on the roadway between mileposts 6.55 and 16.50 on US Route 20 in Lorain County.

{¶15} 5) Defendant pointed out the damage-causing object was deposited on the roadway by an unidentified third party. Defendant contended DOT cannot be held liable for the acts of a third party under the particular circumstances reported.

{¶16} 6) Plaintiff has not responded to defendant’s investigation report.

CONCLUSIONS OF LAW

{¶17} 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.

{¶18} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the condition 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. 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, 31 OBR 64, 507 N.E. 2d 1179.

{¶19} Plaintiff has not produced sufficient evidence to indicate the length of time

the debris 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 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 debris to be on the roadway. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

{¶10} 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, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 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.

{¶11} Evidence in the instant action tends to show plaintiff's damage was caused by an act of an unidentified third party, not DOT. Defendant has denied liability based on the particular premise it had no duty to control the conduct of a third person except in cases where a special relationship exists between defendant and either plaintiff or the person whose conduct needs to be controlled. *Federal Steel & Wire Corp. v. Ruhlin Const. Co.* (1989), 45 Ohio St. 3d 171, 543 N.E. 2d 769. However,

defendant may still bear liability if it can be established if some act or omission on the part of DOT was the proximate cause of plaintiff's injury. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶12} “If any injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone.” *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶13} Plaintiff has failed to establish her damage was proximately caused by any negligent act or omission on the part of DOT. In fact, the sole cause of plaintiff's injury was the act of an unknown third party which did not involve DOT. Plaintiff has failed to prove, 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 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 claim is denied.

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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:

Beulah Williams
61 Groveland Street
Oberlin, Ohio 44074

James G. Beasley, Director
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RDK/laa

12/19
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