

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

ANGELA GRANT, et al.

Case No. 2007-07566-AD

Plaintiffs

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Michael Grant, stated he and his wife, plaintiff Angela Grant, were traveling west on Interstate 275, “between Cincinnati Mills exit and Hamilton Ave. exit,” when their 2007 Toyota Camry was struck by, “what appeared to be a metal plate (possibly a construction sign),” causing substantial damage to the vehicle. Plaintiffs submitted photographs depicting various scrape marks on the hood and grille of their automobile as well as damage to the car’s windshield. Plaintiffs related the described damage incident occurred at approximately 2:00 p.m. on September 3, 2007.

{¶2} 2) Plaintiffs implied the damage to their 2007 Toyota Camry was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to keep the roadway free of hazardous debris conditions. Plaintiffs filed this complaint seeking to recover \$500.00, their insurance coverage deductible for automobile repair expenses resulting from the September 3, 2007, incident. The filing fee was paid.

{¶3} 3) Defendant denied any DOT road signs were in position in the general area of plaintiffs’ property damage event on September 3, 2007. Defendant denied any DOT personnel had any knowledge of a sign or other debris in the described area of Interstate 275, which defendant located at milepost 21.0 in Hamilton County. Defendant

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asserted no calls or complaints regarding debris on the roadway at the particular location were received prior to plaintiff's incident. Defendant suggested the damage-causing debris, "was more than likely present for a brief moment before this incident." Defendant explained the DOT Hamilton County Manager inspects the roadways within the county, "at least two times a month." No downed signs or other debris were noted at milepost 21.0 on Interstate 275 the last time an inspection was made prior to September 3, 2007.

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, 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.

{¶5} In order to prove a breach of the duty to maintain the highways, plaintiffs 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.

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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.

{¶6} Plaintiffs have not produced any evidence to indicate the length of time the metal debris was present on the roadway prior to the incident forming the basis of this claim. Plaintiffs have not shown defendant had actual notice of the metal 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 metal debris. Plaintiffs have 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.

{¶7} For plaintiffs to prevail on a claim of negligence, they must prove, by a preponderance of the evidence, that defendant owed them a duty, that it breached that duty, and that the breach proximately caused their 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.

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Plaintiffs have the burden of proving, by a preponderance of the evidence, that they 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.

{¶18} Plaintiffs have not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to them or that their injury was proximately caused by defendant's negligence. Plaintiffs 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, plaintiffs 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:

Angela Grant
Michael Grant
2305 Adams Creek Drive
Cincinnati, Ohio 45231

James G. Beasley, Director
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1980 West Broad Street
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RDK/laa
1/8
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