

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

FRANK FREEMAN

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

Case No. 2007-08449-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) On October 15, 2007, at approximately 9:30 p.m., plaintiff, Frank Freeman, was traveling north on Interstate 71, “about 5 miles past Route 35” when his van ran over “a recap off a tractor trailer tire” laying on the traveled portion of the roadway. The tire debris caused damage to the running board of plaintiff’s 2000 Chevrolet Conversion Van.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$500.00 for automotive repair expense. Plaintiff asserted he incurred these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶3} 3) Defendant has denied any liability for plaintiff’s damage. Defendant denied having any knowledge of the truck tire debris prior to plaintiff’s incident. Plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to his property damage occurrence. Defendant conducts frequent litter inspections and litter pick-up operations in the area of plaintiff’s October 15, 2007, property damage event. Defendant denied receiving any calls or complaints about debris on the roadway at county milepost 8.80 on Interstate 71 in Fayette County (the approximate location of plaintiff’s damage occurrence). Defendant suggested the

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debris existed at that location, “for only a relatively short amount of time before plaintiff’s incident.”

CONCLUSIONS OF LAW

{¶14} 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.

{¶15} 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.

{¶16} 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.

{¶17} Plaintiff has not produced any evidence to indicate the length of time the

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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.

{18} Finally, 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.



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MEMORANDUM DECISION

[Cite as *Freeman v. Ohio Dept. of Transp.*, 2008-Ohio-1766.]

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ENTRY OF ADMINISTRATIVE
DETERMINATION

[Cite as *Freeman v. Ohio Dept. of Transp.*, 2008-Ohio-1766.]

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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:

Frank Freeman
7335 Coldstream Drive
Columbus, Ohio 43235

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

RDK/laa
1/15
Filed 2/14/08
Sent to S.C. reporter 4/11/08