[Cite as *Quincel v. Dept. of Transp., Dist. 9,* 2008-Ohio-3937.]

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

ROBERT T. QUINCEL

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION, DISTRICT 9

Defendant

Case No. 2008-01111-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Robert T. Quincel, states he was traveling south "on U.S. Rt. 23 from Chillicothe to Waverly, Ohio just passing Debord Rd." when his van ran over a road reflector which then struck the doors of his vehicle causing substantial damage. Plaintiff related the damage-causing road reflector was laying on the traveled portion of the roadway and apparently had not been attached to the roadway surface. Plaintiff explained the reflector was owned by defendant, Department of Transportation ("DOT") and suggested since "[n]o reflectors were missing from (the) road at (the) time of impact" that the particular reflector "either was left behind by ODOT or (had) fallen off one of (their) trucks." A report compiled shortly after the described damage event listed the date of the incident as December 18, 2007.

{¶ 2} 2) Plaintiff implied the damage to his van was proximately caused by negligence on the part of defendant in leaving hazardous debris on US Route 23 in Ross County. Consequently, plaintiff filed this complaint seeking to recover $1,239.60, the cost of automotive repair incurred as a result of the vehicle striking the loose road reflector. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of a loose reflector on the roadway prior to

December 18, 2007. Defendant related DOT records "do not indicate any calls or complains were received from the State Highway Patrol, Ross County Sheriff's Department or a person from the traveling public regarding a loose reflector on US 23 prior to plaintiff's incident." Defendant approximately located the damage-causing reflector at milepost 3.19 on US Route 23 in Ross County. Defendant expressed the belief "that the loose reflector existed in that location for only a relatively short amount of time before plaintiff's incident."

{¶ 4} 4) Defendant contended plaintiff failed to offer sufficient evidence to prove DOT negligently maintained the roadway. Defendant further contended plaintiff did not introduce evidence to establish "that the conduct of ODOT was the cause" of the property damage claimed. Defendant observed DOT Ross County Transportation Manager inspected US 23 within the county on December 10, 2007, and did not discover any loose reflectors on the roadway or other safety hazards. An additional roadway inspection was conducted on December 31, 2007, and again no loose reflectors were noticed.

{¶ 5} 5) Plaintiff filed a response stating he conducted his own inspection on US Route 23 south around Debord Road where a road reflector had been dislodged and the reflector was missing. Plaintiff recalled he conducted this inspection on February 4, 2008 or five weeks after December 31, 2007. Plaintiff also stated he "found around 14 missing markers on Ohio State Route 104 within a 2 mile" section. Plaintiff submitted photographs depicting various roadway areas where reflectors had become dislodged. Plaintiff stated his roadway inspections and photographic evidence "clearly shows that markers in the middle of the roads in Ross Co are not being checked nor fixed." Essentially, plaintiff argued his February 2008 discovery that road reflectors have been uprooted on Ross County roadways constitutes evidence of negligent maintenance on the part of DOT in December 2007. Plaintiff did not submit any evidence to indicate the length of time prior to December 18, 2007 that the particular road reflector his van struck had become dislodged.

CONCLUSIONS OF LAW

{¶ 6} 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.

{¶ 7} In order to prove breach of 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 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.

{¶ 8} Plaintiff has not produced sufficient evidence to indicate the length of time that the particular defect was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown that defendant had actual notice of the loosened reflector. 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 that the defect 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 uprooted reflector. However, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861.

{¶ 9} Plaintiff has not produced sufficient 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. Plaintiff failed to show the damage-causing defect was connected to any negligence on

the part of defendant or defendant was negligent in maintaining the area. *Brzuszkiewicz v. Dept. of Transportation* (1998), 97-12106-AD; *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.

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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
4/9
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