[Cite as *Caldwell v. Ohio Dept. of Transp.*, 2008-Ohio-4186.]

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

JAMI CALDWELL

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-08830-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Jami Caldwell, filed this action to recover the cost of repair to her 2007 Mazda 3 GT after the vehicle was damaged from striking a collapsed catch basin located at the entrance to a restaurant parking lot adjacent to State Route 193 in Trumbull County. Plaintiff stated, "[o]n October 12, 2007 at approximately 8:40 p.m., I pulled off of State Route 193 making a right into the parking lot of Sonny's Family Restaurant (and) [a]s I entered the lot, I heard a loud noise." Plaintiff related that upon hearing the loud noise she realized her car "had hit something" so she parked and then inspected her automobile for damage. Plaintiff noted she observed scratches and dents to the right front bumper of her car as well as cracks and breaks in the car's front shield. Plaintiff pointed out the front end damage to her automobile "was caused by a sewer/water drain (catch basin) that was sunken into the parking lot." Plaintiff asserted the sunken catch basin was not visible from State Route 193 and had not been marked in any way to provide warning of the hazardous condition to motorists. Plaintiff further asserted she was later informed by the restaurant owner that the catch basin was the maintenance responsibility of defendant, Department of Transportation ("DOT") and that DOT had been notified about the deteriorated condition of the catch basin. Plaintiff submitted photographs depicting the damage to her car and the catch basin area after repairs had been made. Two photographs show both State Route 193 and the catch basin adjacent to the roadway. The photographs depict a fairly steep grade from the paved roadway leading to the catch basin area with an abrupt drop from the paved roadway berm.

{¶ 2} 2) Plaintiff contended the damage to her car was proximately caused by negligence on the part of defendant in maintaining a hazardous defective roadway condition. Plaintiff, consequently, filed this complaint seeking to recover $515.85, the cost of automotive repair she incurred as a result of the October 12, 2007 incident. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge about a problem with the catch basin prior to plaintiff's property damage event. Defendant's records show an individual at Sonny's Restaurant reported the catch basin problem on October 17, 2007, five days after plaintiff's damage occurrence. Defendant asserted no complaints were received before October 12, 2007 about the catch basin which DOT located at milepost 17.80 on State Route 193 in Trumbull County. Defendant argued plaintiff failed to produce any evidence "to indicate how long the damaged catch basin existed in the parking lot prior to her incident." Defendant insisted the roadway was regularly maintained during the period prior to plaintiff's damage occurrence. Defendant contended plaintiff failed to establish her damage was proximately caused by any negligent act or omission on the part of DOT.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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 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.

{¶ 6} 3) Plaintiff has not produced any evidence to indicate the length of time any defective catch basin condition or other 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 a defective condition. 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 defective condition 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 collapsed catch basin. 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.

{¶ 7} 4) 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, 15 OBR 179, 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." *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed. 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. Defendant professed liability cannot be established when requisite notice of the damage-causing conditions cannot be proven. Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard*. However, proof 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. Department of Transportation* (1996), 94-13861. Plaintiff has failed to produce sufficient evidence to prove her property damage was caused by a defective condition created by DOT.

{¶ 8} 5) 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 damage-causing condition 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. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant's roadway maintenance activity created a nuisance. Plaintiff has not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to her vehicle. *Hall v. Ohio Department of Transportation* (2000), 99-12863-AD.

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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:

Jami Caldwell
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New Castle, Pennsylvania 16105

James G. Beasley, Director
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RDK/laa
4/30
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