[Cite as *Wilson v. Ohio Dept. of Transp.*, 2008-Ohio-4198.]

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

KIMBERLY WILSON

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-02045-AD	- 2 -	MEMORANDUM DECISION

Case No. 2008-02045-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 26, 2008, at approximately 2:08 p.m., Cody Wilson, a minor, was driving a 2003 Ford Mustang east on Interstate 90 in Avon, Ohio, when the vehicle struck an uprooted road reflector laying on the traveled portion of the roadway. The road reflector punctured both the tire and rim of the 2003 Ford Mustang.

{¶ 2} 2) Plaintiff, Kimberly Wilson, the mother of Cody Wilson, filed this complaint seeking to recover $552.02, the total cost of replacement parts and other expenses she incurred to have the Ford Mustang repaired. Plaintiff implied the damage to the automobile was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to maintain the roadway. The $25.00 filing fee was paid and plaintiff requested reimbursement of that amount along with her damage claim.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT

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personnel had any knowledge of a dislodged road reflector prior to the January 26, 2008 property damage occurrence. Defendant's records show no calls or complaints were received regarding a dislodged reflector which DOT located at state milepost 153.80 on Interstate 90 in Lorain County. Defendant asserted plaintiff failed to produce any evidence to establish the length of time the uprooted road reflector existed prior to 2:08 p.m. on January 26, 2008. Defendant suggested that the particular debris condition "existed in that location for only a relatively short amount of time before plaintiff's incident." Defendant explained DOT employees conducted litter pick-up operations around milepost 153.80 on Interstate 90 on January 25, 2008, and did not discover any uprooted road reflectors. Defendant contended plaintiff failed to prove the property damage claim was proximately caused by any negligence on the part of DOT in regard to roadway maintenance.

CONCLUSION 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.

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{¶ 5} 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 incident. *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} 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 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 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. Plaintiff has not produced evidence to infer that 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.

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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
5/14
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