

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

DEBRA ANN FISHER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-05257-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} On January 20, 2008, at approximately 2:00 p.m., plaintiff, Debra Ann Fisher, was traveling west on Interstate 70 “in the Reynoldsburg area” of Franklin County, when a preceding motorist struck a “steel rod” laying on the roadway causing the object to fly into the path of plaintiff’s 2006 Chevrolet Equinox. The “steel rod” lodged into the front fender of plaintiff’s vehicle and also damaged the front bumper of the 2006 Chevrolet Equinox. Plaintiff observed the damage-causing “steel rod” was approximately five feet in length. Plaintiff stated, “I believe it may have come from a plow.”

{¶ 2} Plaintiff asserted the damage to her vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway. Plaintiff filed this complaint seeking to recover \$887.64, her total cost of automotive repair resulting from the January 20, 2008 incident. The filing fee was paid.

{¶ 3} Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of any metal debris on the roadway prior to plaintiff's property damage event. Defendant denied receiving any calls or complaints about the particular debris condition which DOT located at state milepost 110.00 on Interstate 70 in Franklin County. Defendant asserted plaintiff did not offer any evidence to establish the length of time the "steel rod" was laying on Interstate 70 before 2:00 p.m. on January 20, 2008. Defendant suggested the "debris existed in that location (milepost 110.00) for only a relatively short amount of time before plaintiff's incident." Defendant contended plaintiff did not provide evidence to show her property damage was attributable to any conduct on the part of DOT. In fact, defendant noted the evidence available shows plaintiff's damage was caused by an unidentified third party motorist. Defendant asserted, under the circumstances of this claim, DOT has no duty to control the conduct of the third party motorist who displaced the damage-causing roadway debris.

{¶ 4} Furthermore, defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly been repaired or rectified. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance. Defendant's records show DOT personnel were last in the vicinity of milepost 110.0 on Interstate 70 prior to plaintiff's incident on January 18, 2008. The records show DOT employees conducted "road cruiser" operations and "litter pickup" on January 18, 2008. Apparently no "steel rod" debris was found near milepost 110.0 during these maintenance activities. No evidence has been offered to indicate the origin of the "steel rod" debris.

CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} In order to recover in any suit involving injury proximately caused by

roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the condition 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. 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.

{¶ 7} Plaintiff has not produced any evidence to indicate the length of time the “steel rod” debris 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 “steel rod.” 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 “steel rod” 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 condition of the “steel rod” debris. 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.

{¶ 8} 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, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 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.” 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.

{¶ 9} Evidence in the instant action tends to show plaintiff’s damage was caused by an act of an unidentified third party, not DOT. Defendant has denied liability based

on the particular premise it had no duty to control the conduct of a third person except in cases where a special relationship exists between defendant and either plaintiff or the person whose conducts needs to be controlled. *Federal Steel & Wire Corp v. Ruhlin Const. Co.* (1989), 45 Ohio St. 3d 171, 543 N.E. 2d 769. However, defendant may still bear liability if it can be established if some act or omission on the part of DOT was the proximate cause of plaintiff's injury. 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.

{¶ 10} “If any injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone.” *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶ 11} Plaintiff has failed to establish her damage was proximately caused by any negligent act or omission on the part of DOT. In fact, the sole cause of plaintiff's injury was the act of an unknown third party which did not involve DOT. Plaintiff has failed to prove, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show 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.



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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:

Debra Ann Fisher
2159 Sutter Parkway
Dublin, Ohio 43016

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

8/20

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