

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

HOWARD SCHULTZ

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2008-05125-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On January 24, 2008, at approximately 10:00 a.m., plaintiff, Howard Schultz, was driving his 2004 Dodge Laramie pickup truck on State Route 125 in Amelia, Ohio, when the vehicle struck a dislodged centerline road reflector. Plaintiff related the road reflector bounced up from the roadway surface and punctured the left rear fender of his pickup truck. Plaintiff contended the road reflector had been dislodged by a snow plow owned by defendant, Department of Transportation (“DOT”) and operated by a DOT employee. Plaintiff explained, “[i]t snowed on the evening of January 23, 2008 (and) morning of January 24, 2008 ODOT plowed (State Route) 125 in Amelia sometime prior to my driving there.” According to plaintiff, when DOT conducted snow removal operations on State Route 125 during the morning of January 24, 2008, a DOT plow uprooted a road reflector “[j]ust in front of the cemetery in central Amelia.” Plaintiff pointed out the uprooted reflector remained on the roadway surface and subsequently caused the fender damage to his truck at approximately 10:00 a.m. on January 24, 2008. Plaintiff stated that prior telephone complaints about the dislodged reflector had been received at the local Union Township office and a

Township employee had been dispatched to remove the reflector from the roadway. However, plaintiff's vehicle had already struck the reflector before the Township employee arrived and had an opportunity to remove the object.

{¶ 2} Plaintiff alleged the damage to his vehicle was proximately caused by negligence on the part of defendant in conducting snow removal operations on the morning of January 24, 2008 on State Route 125 in the Village of Amelia, Ohio, Clermont County. Plaintiff filed this complaint seeking to recover damages for automotive repair in the amount of \$1,298.51. Plaintiff paid the \$25.00 filing fee and requested reimbursement of that cost along with his damage claim. Plaintiff acknowledged he has insurance coverage for vehicle damage with a \$500.00 deductible provision and he received payment from his insurer in the amount of \$684.28. Pursuant to the provisions of R.C. 2743.02(D)¹, plaintiff's damage claim is limited to \$500.00, his insurance coverage deductible.

{¶ 3} Defendant denied liability based on the contention that no DOT personnel had any knowledge of a loose reflector on the roadway prior to plaintiff's January 24, 2008 property damage occurrence. Defendant related that DOT records indicate that no previous calls or complaints were received from any entity regarding the particular dislodged reflector which DOT located at approximately milemarker 5.51 on State Route 125 in Clermont County. Defendant contended plaintiff failed to produce any evidence to show how long the dislodged reflector existed on the roadway prior to 10:00 a.m. on January 24, 2008. Defendant suggested that the loose reflector condition likely, "existed in that location for only a relatively short amount of time before plaintiff's incident."

{¶ 4} Defendant asserted that plaintiff did not provide evidence to establish that his property damage was caused by negligent maintenance on the part of DOT. Defendant argued plaintiff did not offer sufficient evidence to prove his damage was caused by conduct attributable to DOT. Defendant explained, "that this section of SR 125 was in the Village of Amelia and ODOT is only responsible for plowing snow,

¹ R.C. 2743.02(D) states:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances prescribed in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section

pavement repair, pavement marking work and sign work.” Defendant neither confirmed nor denied DOT personnel conducted snow removal operations on State Route 125 in the Village of Amelia on the morning of January 24, 2008. Defendant related DOT work crews conducted litter patrol operations in the vicinity of plaintiff’s incident on December 21, 2007.

{¶ 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. Also, defendant has a duty to exercise reasonable care for the motoring public when conducting snow removal operations. *Andrews v. Ohio Department of Transportation* (1998), 97-07277-AD.

{¶ 6} Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. However, proof of notice of a dangerous condition is not necessary when defendant’s own personnel actively cause such condition, as appears to be the situation in the instant matter. 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.

{¶ 7} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his 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 he 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

apply under those circumstances.

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. 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. In the instant claim, plaintiff has presented sufficient evidence to prove his property damage was caused by the acts of DOT personnel in conducting snow removal operations. See *Hartley v. Ohio Dept. of Transportation* (2001), 2001-05898-AD; *McFadden v. Ohio Dept. of Transp.*, 129 Ohio Misc. 2d 1, 2004-Ohio-3756; *Ruminski v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-05213-AD, 2005-Ohio-4223. The trier of fact finds the pavement marker (reflector) that damaged plaintiff’s truck was dislodged by a DOT vehicle performing snow removal on State Route 125. Defendant is therefore liable to plaintiff for his insurance deductible \$500.00, plus the \$25.00 filing fee representing compensable costs.

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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 plaintiff in the amount of \$525.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:
Howard Schultz
2876 S. Bantam Road
Bethel, Ohio 45106

James G. Beasley, Director
Department of Transportation
1980 West Broad Street
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RDK/laa
8/25
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