[Cite as *Neff v. Ohio Dept. of Transp.*, 2008-Ohio-5919.]

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

CINDY NEFF, et al.

Plaintiffs

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-04374-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

[Cite as *Neff v. Ohio Dept. of Transp.*, 2008-Ohio-5919.]

FINDINGS OF FACT

{¶ 1} 1) On March 15, 2008, at approximately 7:45 p.m., plaintiff, Paul Neff, was driving a 2007 Dodge Caliber owned by plaintiff, Cindy Neff, south on Interstate 77 in Guernsey County, when the vehicle hit an object laying on the traveled portion of the roadway. Plaintiffs stated, "[a]s we were driving in (the) right lane to exit at (the) Byesville Exit we hit very (unexpectedly) a very hard iron-like chunk in the path of our right front wheel." Plaintiffs pointed out that impact with the "hard iron-like chunk" debris was unavoidable due to passing traffic occupying the open roadway lane. The debris plaintiffs' vehicle struck was apparently a large piece of sheet metal. The sheet metal debris caused tire and rim damage to plaintiffs' automobile.

{¶ 2} 2) Plaintiffs asserted the damage to their car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. Plaintiffs filed this complaint seeking to recover $500.00, their insurance coverage deductible for automotive repair. The $25.00 filing fee was paid and plaintiffs requested reimbursement of that cost along with their damage claim.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of the damage-causing debris on the roadway prior to plaintiff's property damage event. Defendant denied receiving any prior calls or complaints from any entity about the particular roadway debris which DOT located at milepost 44 on Interstate 77 in Guernsey County. Defendant asserted plaintiffs did not produce any evidence to show the length of time the sheet metal debris was on the roadway prior to 7:45 p.m. on March 15, 2008. Defendant suggested "the debris existed in that location for only a relatively short amount of time before plaintiffs' incident." Defendant related the "incident was an unfortunate one but the Department of Transportation does not believe that it breached its duty of care to the traveling public and, therefore, did not act negligently toward plaintiff."

CONCLUSIONS 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; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶ 5} In order to prove a breach of the duty to maintain the highways, plaintiffs 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 condition 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. 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 debris appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. 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. There is no evidence defendant had any notice of the sheet metal debris prior to plaintiffs' incident and there is no evidence defendant created the condition.

{¶ 6} Plaintiffs have not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to them or that their injury was proximately caused by defendant's negligence. Plaintiffs 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.

{¶ 7} Plaintiffs have failed to provide sufficient evidence to prove defendant maintained a hazardous condition on the roadway which was the substantial or sole cause of plaintiffs' property damage. Plaintiffs have failed to prove, by a preponderance

of the evidence, that defendant's roadway maintenance activity created a nuisance. Plaintiffs have not submitted conclusive evidence to prove a negligent act or omission on the part of defendant caused the damage to their vehicle. *Hall v. Ohio Department of Transportation* (2000), 99-12863-AD.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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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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Paul Neff
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RDK/laa
7/16
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