[Cite as *Sams v. Ohio Dept. of Transp., Dist. 12*, 2009-Ohio-6366.]

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

TONYA SAMS

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2009-03525-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On January 31, 2009, at approximately 3:30 p.m., plaintiff, Tonya Sams, was traveling east on Interstate 90 in Cuyahoga County "under a bridge around the east 72nd street exit" when the windshield of her 2006 Chevrolet Cobalt was cracked by an object falling from the bridge spanning the roadway,

{¶ 2} 2) Plaintiff implied the property damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to maintain the bridge spanning Interstate 90. The origin of the object that struck plaintiff's automobile windshield was not known. It is unclear whether or not the damage-causing object was part of the bridge structure itself. Plaintiff filed this complaint seeking to recover $228.38, the cost of a replacement windshield. The filing fee was paid.

{¶ 3} 3) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of any problems with the overpass bridge spanning Interstate 90 prior to plaintiff's damage event. Furthermore, defendant

asserted plaintiff failed to produce any evidence to establish that the damage-causing debris actually emanated from the overpass bridge. Defendant related DOT records show no calls or complaints were received in regard to "falling debris prior to plaintiff's incident." Defendant argued plaintiff's evidence does not support a finding of negligence. Defendant further argued plaintiff failed to prove the debris that damaged her car was attributable to any act or omission on the part of DOT.

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, 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. 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 developed. *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 personnel passively or actively caused 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.

{¶ 6} Ordinarily in a claim involving roadway defects, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective 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. No evidence has been presented to prove DOT

had notice of any defective bridge condition or that DOT negligently maintained the bridge.

{¶ 7} 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. 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.

{¶ 8} This court has previously held DOT liable for property damage resulting from falling debris. *Elsey v. Dept. of Transportation* (1989), 89-05775-AD. This court, as the 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 failed to show the damage-causing object was connected to any act or omission on the part of defendant, defendant was negligent in maintaining the area, or any other negligence on the part of defendant. *Brzuszkiewicz v. Dept. of Transportation* (1998), 97-12106-AD; *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.

{¶ 9} 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 that the damage-causing condition was created by conduct under the control of defendant, or negligent maintenance on the part of defendant. *Kapucinski v. Dept. of Transp.*, Ct. of Cl. No. 2004-08367-AD, 2005-Ohio-616; *Cramer v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-09383-AD, 2006-Ohio-366; *Hanna v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2006-02064-AD, 2006-Ohio-7239.

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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:

Tonya Sams

Jolene M. Molitoris, Director

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RDK/laa
7/6
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