[Cite as *Donovan-Lyle v. Ohio Dept. of Transp.*, 2015-Ohio-4888.]

IN THE COURT OF CLAIMS OF OHIO

JENELLE DONOVAN-LYLE

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-00886-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff Jenelle Donovan-Lyle filed this claim on November 7, 2014, to recover damages which occurred on October 3, 2014 when her vehicle was struck by a broken piece of metal from a construction sign while she was traveling southbound on Interstate 71 in Delaware County, Ohio. This road is a public road maintained by the Ohio Department of Transportation. Plaintiff's vehicle sustained damages in the amount of $499.64. Plaintiff maintains a collision insurance deductible of $500.00.

{¶2} In order to recover on a claim for roadway damages against the Ohio Department of Transportation, Ohio law requires that a motorist/plaintiff prove ***all*** of the following:

{¶3} That the plaintiff's motor vehicle received damages as a result of coming into contact with a dangerous condition on a road maintained by the defendant.

{¶4} That the defendant knew or should have known about the dangerous road condition.

{¶5} That the defendant, armed with this knowledge, failed to repair or remedy the dangerous condition in a reasonable time.

{¶6} In this claim, the Court finds that the plaintiff did prove that her vehicle received damages and that those damages occurred as a result of the plaintiff's vehicle coming into contact with a dangerous condition on a road maintained by the defendant.

{¶7} The next element that a plaintiff must prove to succeed on a claim such as this is to show that the defendant knew or should have known about this dangerous condition.

{¶8} Based on the evidence presented, the Court is unable to find that the defendant had actual knowledge of the dangerous condition. Likewise, the Court is unable to find that the defendant should have known about this dangerous condition and thus would have had constructive notice about the highway danger. Constructive notice is defined as "(n)otice arising from the presumption of law from the existence of facts and circumstances that a party has a duty to take notice of...Notice presumed by law to have been acquired by a person and thus imputed to that person." (Black's Law Dictionary at 1090 8th Ed. 2004.)

{¶9} In order for there to be constructive notice, a plaintiff must prove that sufficient time has passed after the dangerous condition first appears, so that under the circumstances the defendant should have gained knowledge of its existence. This, the plaintiff has been unable to do.

{¶10} In the Investigation Report filed February 27, 2015, the defendant stated that the area where plaintiff had her accident was a construction zone. The department had contracted with the Kenmore Construction Company to do certain construction work on this section of I-71.

{¶11} In the complaint presented to the Court, the Court may only pass judgment on whether the plaintiff has shown that the department breached its duty to the public in managing the contractor and ensuring the safety of the public within the construction zone.

{¶12} In this case, there is nothing in the record that would allow the Court to find that the department did not act appropriately to keep the construction area safe. ODOT had not received any notice of a broken piece of metal lying in the roadway where claimant had her accident. Additionally, the debris was located on a heavily traveled section of an interstate highway. If the debris had been present for any appreciable

period of time, it is likely that it would have become known to the agency or to its contractor through alerts from passing motorists or their own inspection and work crews. It is therefore most likely that the piece of metal only recently traveled into the roadway, creating the hazard that caused Ms. Donovan-Lyle's accident. Such condition is not attributable to any negligence on the part of ODOT. Rather, it is an unfortunate by-product of the conditions present on an active construction project. The plaintiff did not offer any evidence to counter what was in the defendant's report regarding this element.

{¶13} Ohio law is clear that ODOT cannot guarantee the same level of safety during a highway construction project as it can under normal traffic conditions. *Feichtner v. Ohio Dept. of Transp.* (1995), 114 Ohio App.3d 346, 354; *Roadway Express, Inc.* The test is whether, under the totality of the circumstances, "ODOT acted sufficiently to render the highway reasonably safe for the traveling public during the construction project." *Basilone v. Ohio Dept. of Transp.* (Feb. 13, 2001), Franklin App. No. 00AP-811, citing *Feichtner,* and *Lumbermens Mut. Cas. Co. v. Ohio Dept. of Transp.* (1988), 49 Ohio App.3d. 129.

{¶14} Since the plaintiff is unable to prove that the defendant knew or should have known about this dangerous condition, the claim must fail.

IN THE COURT OF CLAIMS OF OHIO

JENELLE DONOVAN-LYLE

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-00886-AD

Clerk Mark H. Reed

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.

_____

MARK H. REED
Clerk

Entry cc:

Jenelle Donovan-Lyle
5568 Bow Falls Blvd.
Dublin, Ohio 43016

Jerry Wray, Director
Ohio Department of Transportation
1980 West Broad Street
Mail Stop 1500
Columbus, Ohio 43223

Filed 4/23/15
Sent to S.C. Reporter 11/24/15