[Cite as *Sears v. Ohio Dept. of Transp.*, 2016-Ohio-1343.]

MIA N. SEARS Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2015-00863-AD Clerk Mark H. Reed MEMORANDUM DECISION

{¶1} Plaintiff Mia N. Sears (hereinafter "plaintiff") filed this claim on October 7, 2015 to recover damages which occurred when her 2009 Infiniti struck an orange construction barrel on September 9, 2015 while traveling on IR 75 in Hamilton County, Ohio. This road is a public road maintained by the Ohio Department of Transportation (hereinafter "ODOT"). Plaintiff's vehicle sustained damages in the amount of $1,130.85.

{¶2} The evidence in this case reveals that the area where plaintiff had her accident was a construction zone. ODOT had contracted with John R. Jurgensen Company to do certain construction work on this section of IR 75 in Hamilton County.

{¶3} In the Investigation Report filed December 23, 2015, ODOT indicates that the incident involving plaintiff's vehicle occurred at mile posts 7.1 or 7.0 on IR 75 in Hamilton County. The agency reiterates that this area was part of an ongoing construction project being undertaken by the John R. Jurgensen Company. The agency maintained that it was not aware that any orange construction barrel in the construction area had traveled into the roadway prior to plaintiff's accident.

{¶4} In a complaint presented to the Court regarding damage to motor vehicles traveling on a state highway in a construction zone, the Court may only pass judgment on whether the plaintiff has shown that ODOT breached its duty to the public in managing the contractor and ensuring the safety of the public within the construction zone. ODOT could be found negligent in this type of case only if it failed to properly

manage the contractor by reasonably inspecting the construction site and the work performance of the contractor, or if the agency knew or should have known about the orange construction barrel in question and failed to repair or to require the contractor to repair the road hazard.

{¶5} As we consider whether ODOT breached its duty to the public in keeping the construction area safe, the Court must take into account that this was an active construction zone. 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. 3d346, 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), Hamilton App. No. 00AP-811, citing *Feichtner*, and *Lumbermens Mut. Cas. Co. v. Ohio Dept. of Transp*. (1988), 49 Ohio App.3d. 129.

{¶6} In this case, there is nothing in the record that would allow the Court to find that ODOT did not act appropriately to manage the contractor and keep the construction area safe. The plaintiff did not offer any evidence to counter what was in ODOT's report regarding this element.

{¶7} 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

MIA N. SEARS Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2015-00863-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 the defendant. Court costs shall be absorbed by the court.

MARK H. REED
Clerk

Entry cc:

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