

[Cite as *Ventura v. Ohio Dept. of Transp.*, 2005-Ohio-1250.]

IN THE COURT OF CLAIMS OF OHIO

PATRICIA VENTURA :
Plaintiff :
v. : CASE NO. 2004-06640-AD
OHIO DEPT. OF TRANSPORTATION : ENTRY OF DISMISSAL
Defendant :

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{¶ 1} On June 17, 2004, plaintiff filed a complaint against defendant, Department of Transportation. Plaintiff alleges on June 9, 2004, while traveling under the Rockside Road Bridge on Interstate 271 in Bedford Heights, Ohio, an object struck her windshield causing damage. Plaintiff asserts construction work was being performed on the bridge at the time of the incident. Plaintiff seeks reimbursement for windshield replacement in the amount of \$259.20 from the defendant. Plaintiff submitted the filing fee with the complaint.

{¶ 2} On August 5, 2004, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} "Defendant asserts it is not responsible for the maintenance of I-271 under the Rockside Road Bridge in Bedford Heights, Ohio. On August 2, 1965, the Ohio Department of Transportation signed an Ordinance with the City of Bedford Heights for maintenance services of I-80 and I-271 (See Exhibit A). This agreement is still in affect.

{¶ 4} "Defendant asserts that pursuant to the agreement between

the Ohio Department of Transportation and the City of Bedford Heights, the City of Bedford Heights, and not the defendant, is responsible for maintaining the roadway upon which plaintiff's incident occurred, that being on I-271 under the Rockside Road Bridge, within the City of Bedford Heights."

{¶ 5} Plaintiff has not responded to defendant's motion to dismiss.

{¶ 6} The site of plaintiff's incident was within the city limits of Bedford Heights.

{¶ 7} An ordinance was passed by the City of Bedford Heights and became effective on July 20, 1965. The ordinance in pertinent part stated:

{¶ 8} "NOW, THEREFORE, Be It Ordained by the Council of the City of Bedford Heights, Ohio:

{¶ 9} "SECTION 2: That the city hereby proposes to cooperate with the State of Ohio and will bear the cost, and

{¶ 10} "(b) Maintain and repair the wearing surface on bridges carrying municipal streets over the interstate highway when such wearing surface is separate from the bridge floor slab. Changes in type of depth of wearing surface will not be permitted without prior approval by the State."

{¶ 11} The site of the damage causing incident, the Rockside Road Bridge, was not the maintenance responsibility of defendant. Consequently, plaintiff's case is DISMISSED.

{¶ 12} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Patricia Ventura
9835 Memphis Avenue #12
Brooklyn, Ohio 44144

Plaintiff, Pro se

Thomas P. Pannett, P.E.
Assistant Legal Counsel
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

Defendant

DRB/laa
8/23

IN THE COURT OF CLAIMS OF OHIO

PATRICIA VENTURA :
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 Plaintiff :
 :
 v. : CASE NO. 2004-06640-AD
 :
 OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
 :
 Defendant :

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FINDINGS OF FACT

{¶ 13} Plaintiff, Patricia Ventura, alleged her automobile windshield was cracked when pelted by construction debris falling from a bridge spanning Interstate 77 north in Cuyahoga County. Plaintiff stated she was traveling north on Interstate 77 towards Interstate 480 west on June 9, 2004, about 1:15 p.m., when she

approached a bridge and nearby roadside where construction work was being performed. Plaintiff related as she drove near the bridge she, "heard a ping on my windshield." Once she reached her destination plaintiff examined her car and discovered a crack in the windshield glass. Plaintiff submitted photographs depicting the damage to her windshield.

{¶ 14} Plaintiff has contended defendant, Department of Transportation ("DOT"), should bear liability for the damage to her automobile windshield. Plaintiff suggested DOT was in charge of the construction operation on the bridge and roadside where her property damage occurred and therefore, DOT should be responsible for a replacement windshield. Plaintiff filed this complaint seeking to recover \$259.20, the cost of a replacement windshield. The filing fee was paid. Plaintiff speculated a rock propelled from the roadside by moving construction equipment struck her car windshield as she neared the bridge spanning Interstate 77.

{¶ 15} Defendant acknowledged DOT contractor, Independence Excavating, Inc. ("Independence"), was, "performing a slope stabilization project" on the Interstate 77 roadside on June 9, 2004. Defendant explained Independence was involved with "grading the slope in the interchange" more than 100 feet away from the traveled portion of Interstate 77 north. Defendant also explained the slope grading construction work was being conducted behind a barrier wall which had been positioned adjacent to the roadway. Defendant denied any moving construction equipment was working with rock or rocklike debris near the traveling public on Interstate 77.

Defendant offered that the rock which hit plaintiff's car was probably laying on the roadway and was "kicked up by another vehicle." Defendant denied the damage-causing debris originated from Independence or DOT activity.

{¶ 16} Defendant asserted neither DOT nor Independence had any

notice of any rocks or debris on Interstate 77 prior to plaintiff's property damage event. Defendant contended plaintiff failed to produce any evidence to show the length of time rock debris were on the roadway prior to her damage incident.

CONCLUSIONS OF LAW

{¶ 17} 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. However, defendant is not an insurer of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 18} Further, defendant must exercise due diligence in the maintenance and repair of the highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. This duty encompasses a duty to exercise reasonable care in conducting its roadside maintenance or construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Plaintiff, in the instant claim, has failed to prove defendant negligently maintained the roadway.

{¶ 19} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (debris) 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. For constructive notice to be proven, plaintiff must show sufficient time has elapsed after the dangerous condition (debris) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD. 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 (debris) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. Evidence has shown defendant did not have any notice, either actual or constructive, of the damage-causing debris.

{¶ 20} 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. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that she 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 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, approved and followed.

{¶ 21} 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 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. Consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

PATRICIA VENTURA	:	
Plaintiff	:	
v.	:	CASE NO. 2004-06640-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

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