

# 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

PATSY DETTY

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-11346-AD

Clerk Miles C. Durfey

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Patsy Detty, filed this action against defendant, Department of Transportation (DOT), alleging that her automobile tire was damaged on or about October 5, 2008 as a proximate cause of negligence on the part of DOT in failing to maintain State Route 772 free of a hazardous debris condition. Plaintiff described the specific damage incident noting that “[w]e were traveling south on St Rt 772 toward Rarden when a reflector from a guardrail went through the side of our tire ruining our tire.” Plaintiff pointed out that DOT personnel had been conducting chipping and sealing operations on State Route 772 about a week prior to her October 5, 2008 incident. In addition to the road reflector that damaged her tire, plaintiff recalled that, “[w]e also picked up 3 more reflectors that were lying on the roadway.” Plaintiff seeks damages in the amount of \$246.00, the approximate cost of a replacement tire. Payment of the \$25.00 filing fee was waived.

{¶ 2} 2) Defendant denied liability in this matter based on the contention that no DOT personnel had any knowledge of a loose road reflector on State Route 772

prior to plaintiff's property damage occurrence. Defendant denied receiving any calls or complaints regarding a loose reflector on the roadway which DOT located "between mileposts 4.0 and 11.0 on SR 772 in Jackson County." Defendant explained that this location (a seven mile area) was determined by the information provided by plaintiff in her complaint where she related the damage incident occurred on a roadway section where DOT had performed chip and sealing operations about a week earlier to October 5, 2008. Defendant recorded that, "ODOT did the chip and seal operation on SR 772 from September 22, 2008, to September 26, 2008." Defendant's records (copy submitted) show that plaintiff called the DOT Pike County entity on October 6, 2008 to report the damage to her automobile tire. The recorded entry of plaintiff's call notes that a, "reflector fell off guardrail 772 South Gader Rd sliced tire." Defendant related that plaintiff located the loose reflector near Gardner Road on State Route 772 South, a roadway section that corresponds to milepost 7.56. Defendant denied having any way to determine how long the loose reflector was on State Route 772 but suggested that it "existed in that location for only a relatively short amount of time before plaintiff's incident."

{¶ 3} 3) Defendant explained that DOT Pike County Transportation Managers travel all state roadways in Pike County at least two times a month and inspect these roadways for hazardous conditions. DOT records (copies submitted) show that the particular section of State Route 772 was inspected most recently before plaintiff's incident on September 22, 2008. No loose roadway reflectors were discovered near milepost 7.56 on State Route 772 during the September 22, 2008 inspection. Defendant contended that plaintiff failed to produce any evidence to establish her property damage was caused by DOT breaching any duty of care owed to the traveling public in respect to roadway maintenance.

{¶ 4} 4) Plaintiff filed a response noting that, "there were several reflectors in the roadway not one" on the day of her property damage event. Additionally, plaintiff noted "[t]he incident occurred in Pike County on St. Rt. 772 south appx 1 ½ miles off St Rt 32." Plaintiff did not offer evidence to establish the length of time that the particular reflector her vehicle struck was on the roadway prior to October 5, 2008. Plaintiff did not provide evidence to show any act of DOT produced the loose reflector condition. Plaintiff pointed out that DOT roadway inspectors should have noticed the loose

reflectors on State Route 772 in Pike County.

#### CONCLUSIONS OF LAW

{¶ 5} 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.

{¶ 6} 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. There is no evidence that DOT had any notice of the dislodged reflector on the roadway. 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. No evidence has been submitted to establish that the damage-causing reflector was dislodged from the roadway by defendant's personnel.

{¶ 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. 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 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} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her property damage was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing reflector was connected to any conduct under the control of defendant, or that there was 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.

{¶ 9} Finally, plaintiff has not produced any evidence to infer that defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the dislodged reflector.

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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.

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MILES C. DURFEY  
Clerk

Entry cc:

Patsy Detty  
1003 Williams Road  
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Jolene M. Molitoris, Director  
Department of Transportation  
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RDK/laa  
2/18  
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