[Cite as *Hanlin v. Ohio Dept. of Transp.*, 2005-Ohio-2040.]

IN THE COURT OF CLAIMS OF OHIO

CASEY D. HANLIN	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10582-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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{¶1} On June 14, 2004, at approximately 4:30 p.m., plaintiff, Casey D. Hanlin, was traveling south on State Route 7 between Steubenville and Mingo Junction in Jefferson County, when her automobile struck a rock laying in the right southbound lane of the roadway. The rock, which caused substantial damage to plaintiff's vehicle, had probably fallen from the adjacent hillside onto the traveled portion of State Route 7. Plaintiff asserted the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to keep the highway clear of debris. Consequently, plaintiff filed this complaint seeking to recover $2,038.73, the complete cost of automotive repair resulting from the June 14, 2004, incident, plus $25.00 for filing fee reimbursement. Plaintiff pointed out she has insurance coverage with a deductible of $1,000.00.

{¶2} Plaintiff insisted the damage to her vehicle was the result of negligence on the part of defendant in not properly maintaining the roadway. According to plaintiff, the rock her car struck was located on the traveled portion of State Route 7, "a lot closer to Steubenville not Mingo Jct." Plaintiff noted, "[t]here where [sic] no falling rocks anywhere close to where I hit the rock." Plaintiff related some rocks which

had apparently fallen on the highway from the hillside were located, "further up the road." The origin of the rock plaintiff's automobile struck has not been conclusively determined.[1] However, the trier of fact finds, based on the totality of the circumstances, that the damage-causing rock, in all probability, tumbled down the adjacent hillside onto the traveled portion of State Route 7. Regardless of how the rock arrived on the roadway, plaintiff contended defendant was negligent in failing to timely remove this damage-causing object before her incident.

{¶3} Defendant denied any liability in this matter. Defendant explained "Falling Rock" signs were positioned on the roadway shoulder in the general area of plaintiff's property damage occurrence to warn motorists of possible roadway danger. Additionally, defendant related regular inspections of State Route 7 were conducted to ascertain potential trouble areas where rocks were likely to fall from the adjacent hillside. Furthermore, fencing was erected at the bottom of the hillside cut adjacent to the roadway berm in an attempt to prevent or inhibit falling rocks from rolling onto the traveled portion of the roadway. Although, it is apparent DOT is aware rock falls may occur on State Route 7 in Jefferson County, defendant has denied specific knowledge of the particular fallen rock which caused plaintiff's damage. Defendant contended it exercised reasonable care to protect motorists from the hazards involved with falling rocks. Defendant asserted plaintiff did not produce sufficient evidence to establish the length of time the damage-causing rock was on the roadway prior to the June 14, 2004, incident. Therefore, defendant argued plaintiff failed to prove DOT should have known about the damage-causing rock on the roadway.

{¶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. However, defendant is not an insurer of the safety of

[1] Plaintiff filed a response to defendant's investigation report on February 28, 2005.

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. Generally, defendant has a duty to post warning signs notifying motorists of highway defects or dangerous conditions. *Gael v. State* (1979), 77-0805-AD. The facts of the instant claim do not establish defendant breached any duty in respect to signage or roadway maintenance.

{¶5} Therefore, in order for plaintiff to recover under a negligence theory she must prove, by a preponderance of the evidence, defendant had actual or constructive notice of the rocky debris and failed to respond in a reasonable time or responded in a negligent manner. *Denis v. Department of Transportation* (1976), 75-0287-AD; *O'Hearn v. Department of Transportation* (1985), 84-03278-AD. A breach of the duty to maintain the highways must be proven, by a preponderance of the evidence, showing 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. In the instant claim, plaintiff has failed to prove defendant had requisite notice of the rock debris her vehicle struck. No facts have shown defendant had actual or constructive notice of the rock fall which proximately caused plaintiff's damage.

{¶6} Both plaintiff and DOT in a general sense, had notice of rock falls occurring on the portion of State Route 7 in question. However, plaintiff has failed to prove, by a preponderance of the evidence, that defendant knew or should have known the particular rockslide which resulted in plaintiff's property damage was likely to occur on June 14, 2004. Plaintiff has failed to prove the particular rock face from which the roadway debris originated showed any signs of instability before June 14, 2004. The precautionary, inhibiting, and inspecting measures taken by defendant were adequate and did not fall below the standard of care owed to the traveling public. Consequently, plaintiff has failed to present any set of facts to invoke ensuing liability on DOT. See *Mosby v. Dept. of Transportation* (1999), 99-01047-AD.

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IN THE COURT OF CLAIMS OF OHIO

CASEY D. HANLIN	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10582-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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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:

Casey D. Hanlin
249 Clifton Avenue
Mingo Jct., Ohio 43938

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

For Defendant

DRB/RDK/laa
3/23
Filed 4/5/05

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