

[Cite as *Clarke v. Ohio Dept. of Transp.*, 2005-Ohio-3240.]

IN THE COURT OF CLAIMS OF OHIO

CASSANDRA CLARKE :
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 Plaintiff :
 :
 v. : CASE NO. 2005-02168-AD
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 OHIO DEPT. OF TRANSPORTATION, : MEMORANDUM DECISION
 DISTRICT 11 :
 :
 Defendant :

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{¶ 1} On December 29, 2004, at approximately 11:00 p.m., the daughter of plaintiff, Cassandra Clarke, was driving an automobile on State Route 7 in Jefferson County when the vehicle struck a large rock laying in the right southbound lane of the roadway. The rock debris caused substantial damage to plaintiff's daughter's automobile. Plaintiff related, "[t]here are always rocks and mud on Rt. 7." According to plaintiff, the rock debris was located on the roadway near Mingo Junction, Ohio.

{¶ 2} Plaintiff filed this complaint alleging the damage to her daughter's car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in failing to keep State Route 7 free of rock debris. Plaintiff stated defendant does not take adequate measures to maintain the roadway since, "[t]here are always landslides and slips on SR 7." Plaintiff is seeking \$180.51 in damages for car rental expenses she paid to rent her daughter a car while her daughter's car was being repaired. Plaintiff also seeks recovery of the \$25.00 filing fee which she paid. Plaintiff implied the damage-causing rock debris on State Route 7 rolled onto the roadway from an adjacent hillside area.

Plaintiff professed State Route 7 in the vicinity of Mingo Junction, Ohio is, "in terrible shape."

{¶ 3} Defendant denied any liability in this matter based on the contention DOT personnel did not have any knowledge about rock debris on State Route 7 prior to the December 29, 2004, property damage occurrence. Defendant located this damage occurrence at about milepost 13.24 on State Route 7 in Jefferson County. Defendant related no phone calls or other complaints concerning rock debris on the roadway were received during the six-month period from June 29, 2004, through December 29, 2004. Furthermore, defendant explained periodic litter patrol operations and roadway inspections were conducted in the area and no problems were discovered. Defendant suggested the rock debris probably existed on the particular area of State Route 7 for "only a relatively short amount of time before," the incident involving plaintiff's daughter. Defendant denied acting negligently in respect to roadway maintenance.

{¶ 4} Although responding to defendant, plaintiff did not produce any evidence to indicate the length of time the rock debris condition was on the roadway prior to the December 29, 2004, incident forming the basis of this claim. Plaintiff again noted State Route 7 is frequently subjected to numerous mud slides and rocks on the roadway from the adjacent hillside. Plaintiff did not offer evidence to establish the adjacent hillside was noticeably unstable at the time of the damage event involving her daughter.

{¶ 5} In all probability the rock that damaged the car plaintiff's daughter was driving had fallen from the hillside rock face adjacent to State Route 7. However, determining the origin of damage-causing debris does not necessarily result in a finding of liability against DOT.

{¶ 6} 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 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.

{¶7} 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 damage-causing rock debris. No facts have shown defendant had actual or constructive notice of the rock fall which proximately caused plaintiff's damage.

{¶8} 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 December 29, 2004. Plaintiff has failed to prove the

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Filed 6/1/05
Sent to S.C. reporter 6/24/05