

[Cite as *Peck v. Ohio Dept. of Transp.*, 2005-Ohio-2878.]

IN THE COURT OF CLAIMS OF OHIO

JEFFREY W. PECK :
Plaintiff :
v. : CASE NO. 2005-02257-AD
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On September 20, 2004, at approximately 5:30 p.m., plaintiff, Jeffrey W. Peck, was traveling on State Route 422 at milepost 20.29 in Cuyahoga County when his vehicle struck a dislodged road reflector laying on the traveled portion of the roadway. The reflector damaged a tire on plaintiff's vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$224.35, the cost of a replacement tire. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff paid the filing fee.

{¶ 3} 3) Defendant has denied liability based on the fact it had no knowledge the defective condition existed prior to plaintiff's incident.

{¶ 4} 4) Despite filing a response, plaintiff has failed to produce evidence showing the length of time the broken reflector existed on the roadway prior to his September 20, 2004, property damage event. Plaintiff stated he believes 20-25% of the reflectors on State Route 422 within one mile of the

Geauga/Cuyahoga county line are missing or damaged. Plaintiff questioned whether defendant ever inspects this roadway for damaged reflectors. Plaintiff acknowledged he has no evidence pertaining to the amount of time the reflector was loose prior to his damage occurrence. Plaintiff noted he examined the damage-causing reflector and perceived from the examination, "that it must have taken some time to come loose."

CONCLUSIONS OF LAW

{¶ 5} Defendant has the duty to keep the roads in a 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.

{¶ 6} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that he 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 failed to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 18, approved and followed.

{¶ 7} Ordinarily in a claim involving damages caused by broken road reflectors, plaintiff must prove either: 1) defendant had actual or constructive notice of the defective condition (broken

reflector) 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.

{¶ 8} 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.

{¶ 9} Plaintiff has not produced any evidence to indicate the length of time the damage causing reflector was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the reflector's condition. Additionally, 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 (reflector) appeared. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the reflector's condition. Finally, plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the reflector to become dislodged. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

IN THE COURT OF CLAIMS OF OHIO

JEFFREY W. PECK	:	
Plaintiff	:	
v.	:	CASE NO. 2005-02257-AD
DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : : :

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:

Jeffrey W. Peck
10585 Auburndale Drive
Chagrin Falls, Ohio 44023

Plaintiff, Pro se

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

For Defendant

RDK/laa
4/25
Filed 5/11/05
Sent to S.C. reporter 6/10/05