

[Cite as *Mason v. Ohio Dept. of Transp.*, 2005-Ohio-3972.]

IN THE COURT OF CLAIMS OF OHIO

LIONEL DALE MASON :
Plaintiff :
v. : CASE NO. 2005-04527-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On February 10, 2005, plaintiff, Lionel Dale Mason, was traveling south on State Route 199 near milepost 14.82 in Wood County, when a van traveling in the northbound lane struck a broken dislodged center line reflector and propelled the reflector into the path of plaintiff's vehicle. The reflector then struck the windshield, hood, and side of plaintiff's car causing substantial property damage.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$282.17, his cost of automotive repair after receiving insurance reimbursement. Plaintiff contended he incurred these damages as a result of negligence on the part of defendant, Department of Transportation, in failing to maintain the roadway. Plaintiff submitted the filing fee with the complaint.

{¶ 3} 3) Defendant denied liability based on the fact it had no knowledge the reflector was broken and detached prior to plaintiff's property-damage occurrence. Defendant asserted its employees conducted numerous maintenance operations in the area of plaintiff's incident on many occasions in the six-month period

prior to February 10, 2005, and did not discover any loose pavement markers.

{¶ 4} 4) Plaintiff has not submitted any evidence to indicate the length of time the reflector was defective prior to the incident forming the basis of this claim.

{¶ 5} 5) Defendant denied the roadway reflector was uprooted by any conduct under its control. Defendant asserted the reflector was uprooted by an unidentified motorist. Therefore, defendant contended it cannot be held liable for the act of an unidentified third party.

CONCLUSIONS OF LAW

{¶ 6} Defendant has the duty to keep the roads 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.

{¶ 7} 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. 198, approved and followed.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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 defective condition (reflector). *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

{¶ 11} Plaintiff has failed to show, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's 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 case is denied.

IN THE COURT OF CLAIMS OF OHIO

LIONEL DALE MASON :
Plaintiff :
v. : CASE NO. 2005-04527-AD
OHIO DEPT. OF TRANSPORTATION : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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:

Lionel Dale Mason
11410 W. Genzman Road
Oak Harbor, Ohio 43449

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation

For Defendant

1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
6/30
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