

[Cite as *Williams v. Ohio Dept. of Transp.*, 2005-Ohio-4860.]

IN THE COURT OF CLAIMS OF OHIO

JOE WILLIAMS, et al. :
Plaintiffs :
v. : CASE NO. 2005-05663-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On January 3, 2005, at approximately 9:00 p.m., plaintiff, Joe Williams, was traveling west on US Route 250 at milepost 18.75 in Wayne County, when his automobile struck a "chunk of asphalt" in the roadway. The asphalt debris caused substantial damage to the undercarriage of the vehicle plaintiff was driving. Photographs of the particular highway area were submitted and those photographs depict surface deterioration with loose paving material present on the roadway.

{¶ 2} 2) Plaintiffs filed this complaint seeking to recover \$200.00,¹ their automotive repair costs incurred after insurance reimbursement. Plaintiffs implied the property damage to their car was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining US Route 250. The filing fee was paid.

{¶ 3} 3) Defendant denied any liability based on the assertion it had no knowledge of any roadway defect or debris condition on US

¹ See R.C. 2743.02(D).

Route 250 at milepost 18.75 in Wayne County prior to plaintiffs' property damage occurrence. Defendant related no calls or complaints were received at DOT's Wayne County Garage regarding a deteriorating roadway surface condition on US Route 250 before January 3, 2005. Defendant suggested "this condition occurred rapidly due to the weather changes." Defendant explained DOT personnel conducted routine roadway inspections and did not discover any deteriorated roadway surface at milepost 18.75 on US Route 250 in Wayne County prior to January 3, 2005.

{¶ 4} 4) Despite filing a response, plaintiffs did not present any evidence to establish the length of time the particular roadway surface had been deteriorated prior to the incident forming the basis of this claim. Plaintiffs stated the road was clear on January 1, 2005, two days before their property damage event.

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. 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.

{¶ 6} In order to recover in any suit involving injury proximately caused by roadway conditions including debris, plaintiffs must prove either: 1) defendant had actual or constructive notice of the debris 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.

{¶ 7} 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.

{¶ 8} Plaintiffs have not produced any evidence to indicate the length of time the debris condition 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 debris. 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 debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the debris.

{¶ 9} Finally, plaintiffs have not produced any evidence to infer 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 plaintiffs may have suffered from the roadway debris.

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Plaintiffs	:	
v.	:	CASE NO. 2005-05663-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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 plaintiffs. The clerk shall serve upon all

