[Cite as Rodriguez v. Ohio Dept. of Transp., 2005-Ohio-6116.]

IN THE COURT OF CLAIMS OF OHIO

WILMA M. RODRIGUEZ :

Plaintiff :

v. : CASE NO. 2005-06325-AD

OHIO DEPARTMENT OF : MEMORANDUM DECISION

TRANSPORTATION

:

Defendant

- {¶1} Plaintiff, Wilma M. Rodriguez, asserted her van was damaged when "a piece of concrete or something" fell from a bridge spanning Interstate 90 and struck her vehicle. Plaintiff related she was traveling west on Interstate 90 on April 12, 2005, and as she drove under the "W98th/Lorain Rd overpass" bridge an object fell from the bridge striking her van. Plaintiff further related she checked her vehicle immediately upon arriving at her destination and discovered "two dents and scratch marks on the hood" of the van.
- $\{\P\,2\}$ Plaintiff contended the property damage to her vehicle was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway overpass bridge. Plaintiff filed this complaint seeking to recover \$411.05, the cost of repairs resulting from the April 12, 2005, incident. The filing fee was paid.
- $\{\P\,3\}$ Defendant denied any liability in this matter. Defendant argued plaintiff failed to produce evidence to prove her vehicle was struck by debris falling from an overpass which defendant located at milepost 167.42 in Cuyahoga County. Defendant explained this overpass bridge had been inspected by DOT personnel on July

- 12, 2004, March 30, 2005, and again on April 13, 2005 after receiving a phone call from plaintiff. Consequently, defendant suggested plaintiff's property damage was not caused by any construction material spalling from the Interstate 90 overpass.
- {¶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. DOT has the duty to maintain the system of highways free from unreasonable risk of harm by exercising ordinary reasonable care. White v. Ohio Dept. of Transp. (1990), 56 Ohio St. 3d 39, 42. However, DOT is not an insurer of the safety of its highways. Rhodus v. Ohio Dept. of Transp. (1990), 67 Ohio App. 3d 723.
- {¶5} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. Strother v. Hutchinson (1981), 67 Ohio St. 2d 282, 285. Plaintiff has the burden of proving, by a preponderance of the evidence, that she 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 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.
- $\{\P 6\}$ This court has previously held DOT liable for property damage resulting from falling debris. Elsey v. Dept. of Transportation (1989), 89-05775-AD. This court, as the trier of fact, determines questions of proximate causation. Shinaver v. Szymanski (1984), 14 Ohio St. 3d 51. In the instant claim,

plaintiff has failed to show the damage-causing object was connected to any act or omission on the part of defendant, defendant was negligent in maintaining the area, or any other negligence on the part of defendant. Brzuszkiewicz v. Dept. of Transportation (1998), 97-12106-AD; 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 claim is denied.

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OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE

TRANSPORTATION <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:

Wilma M. Rodriguez

Defendant

Plaintiff, Pro se

3080 W. 116th Street Cleveland, Ohio 44111

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

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