[Cite as *Rosskamm v. Ohio Dept. of Transp., Dist. 12*, 2005-Ohio-7091.]

IN THE COURT OF CLAIMS OF OHIO

BARBARA ROSSKAMM	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06937-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	MEMORANDUM DECISION
Defendant	:	

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FINDINGS OF FACT

{¶ 1} 1) On April 27, 2005, at approximately 8:00 a.m., Zachary Rosskamm was driving a car owned by his mother, plaintiff, Barbara Rosskamm, east on US Route 322 (Mayfield Road), when the vehicle struck asphalt debris laying on the left eastbound lane of the roadway. Plaintiff located the incident on Mayfield Road between Chagrin River Road and County Line in Gates Mills, Ohio. US Route 322 in Gates Mills is a divided four lane highway with an asphalt curbed grass center medium strip dividing the east and westbound lanes of travel. The asphalt debris materials plaintiff's car struck were pieces that had broken and been dislodged from the curbing along the center median divider on Mayfield Road.

{¶ 2} 2) Plaintiff's car sustained damage to the wheel, rim, and suspension as a result of striking the asphalt debris on the roadway. A total of four separate vehicles, including plaintiff's, were damaged from striking asphalt debris on Mayfield Road on April 27, 2005. A police report of the property damage occurrence compiled by an officer of the Gates Mills Police Department noted multiple large pieces of the curb were observed in the eastbound

lane of US Route 322. The investigating officer reported defendant, Department of Transportation ("DOT"), was notified of the damage-causing debris and DOT personnel subsequently arrived at the scene to remove the curbing material from the roadway.

{¶ 3} 3) Plaintiff has contended the damage to her car was proximately caused by negligence on the part of defendant in failing to maintain US Route 322 in Cuyahoga County in a safe, drivable condition. Plaintiff, consequently filed this complaint seeking to recover $1,355.80, the cost of automotive repair resulting from the April 27, 2005, incident. The filing fee was paid.

{¶ 4} 4) Defendant located the April 27, 2005, damage event at approximately milepost 16 on US Route 322 in Cuyahoga County. Defendant acknowledged DOT exercises maintenance responsibility for this portion of US Route 322. However, defendant denied the debris condition which damaged plaintiff's car was caused by any maintenance performed by DOT employees. Additionally, defendant denied having any knowledge of curbing material debris on US Route 322 prior to the incident involving plaintiff's vehicle.

{¶ 5} 5) Defendant reasoned, "[t]his debris was likely caused by a snowplow which struck the street curbing." Defendant explained both DOT and the Village of Gates Mills operate snowplows on US Route 322. Defendant related DOT snow removal operations ceased on March 15, 2005, more than six weeks prior to the April 27, 2005, incident forming the basis of this claim. Therefore, defendant suggested the curbing material on US Route 322 was dislodged by a snowplow operated by the Village of Gates Mills' personnel.

{¶ 6} 6) Defendant insisted its investigation found DOT did not have any knowledge of curbing debris on US Route 322. Defendant

related no complaints were reported about debris conditions on US Route 322, "within four weeks of April 27, 2005." DOT records show a complaint regarding "obstacle in the road" on US Route 322 was received March 16, 2005. Defendant stated a DOT employee conducts routine roadway inspections at least two times a month. Defendant denied any debris conditions were discovered during these inspections. Defendant denied any debris conditions were discovered during routine roadway maintenance.

{¶ 7} 7) Plaintiff's counsels in the response to the investigation report, admitted there is no way to determine the precise date when the curbing material debris appeared on US Route 322. Plaintiff asserted defendant had actual notice of the roadway debris prior to April 27, 2005. Plaintiff professed DOT was aware of the debris on US Route 322. Plaintiff submitted a copy of a Call Record from the Village of Gates Mills dated April 23, 2005. This Call Record reported DOT was notified of road conditions on Mayfield Road. Plaintiff contended this Call Record constitutes evidence DOT received actual notice of the debris on US Route 322 prior to the incident involving plaintiff's automobile. The trier of fact finds plaintiff's contention regarding actual notice of roadway debris is well founded.

CONCLUSIONS OF LAW

{¶ 8} 1) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of ths duty, however, does not necessarily result in liability. Defendant is only liable when plaintiffs prove, by a preponderance of the evidence, that defendant's negligence is the proximate cause of plaintiffs' damages. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio

St. 3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77.

{¶ 9} 2) 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.

{¶ 10} 3) To establish a breach of duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the incident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. 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. Based on the rationale of *McClellan*, supra, defendant is liable for all damages claimed. Evidence has shown DOT had actual notice of the damage-causing debris and failed to respond in a reasonable time after receiving this notice.

IN THE COURT OF CLAIMS OF OHIO

BARBARA ROSSKAMM	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06937-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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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 plaintiff in the amount of $1,380.80, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

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